

CFTC Ex. 530

Long Leaf Trading Group

Donelson, James 2019-08-27

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Condensed Transcript

Prepared by:

Ashley Burden
CFTC

Wednesday, November 3, 2021

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| <p style="text-align: right;">Page 1</p> <p>1 UNITED STATES OF AMERICA BEFORE THE 2 COMMODITY FUTURES TRADING COMMISSION 3 4 IN THE MATTER OF:)) 5 LONG LEAF TRADING GROUP, INC.) 6 7 8 9 10 11 The examination under oath of JAMES 12 DONELSON, taken pursuant to subpoena and the rules 13 of the U.S. Commodity Futures Trading Commission, 14 reported by Mary Maslowski, a Certified Shorthand 15 Reporter and Notary Public within and for the County 16 of Cook and State of Illinois, at 525 West Monroe 17 Street, 11th Floor, Chicago, Illinois, commencing at 18 the hour of 9:10 o'clock on August 27, 2019. 19 20 21 22 23 24</p> | <p style="text-align: right;">Page 3</p> <p>1 INDEX 2 WITNESS EXAMINATION 3 JAMES DONELSON 4 By Mr. Burden 4, 20, 49, 54, 109, 130, 137, 144, 156, 184, 188, 193 5 6 By Mr. Patrick 19, 48, 50, 107, 129, 134, 143, 155, 176, 187, 189 7 8 9 10 EXHIBITS 11 CFTC EXHIBIT MARKED FOR ID 12 No. 1 4 13 No. 55 6 14 No. 56 32 15 No. 57 33 16 No. 58 62 17 No. 59 73 18 No. 60 76 19 No. 61 85 20 No. 62 86 21 No. 63 137 22 No. 64 144 23 No. 65 172 24 No. 66 196 No. 67 201 No. 68 213 No. 69 215 No. 70 218 No. 71 248 No. 72 21 22 23 24</p> |
| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 MR. ASHLEY J. BURDEN, Senior Trial Attorney 4 MS. ELIZABETH M. STREIT, Trial Team Leader 5 MR. JOSEPH J. PATRICK, Investigator 6 U.S. COMMODITY FUTURES TRADING COMMISSION 7 DIVISION OF ENFORCEMENT 8 525 West Monroe Street, Suite 1100 9 Chicago, Illinois 60661 10 (312) 596-0700 11 12 On behalf of the U.S. Commodity 13 Futures Trading Commission; 14 15 MS. REBECCA J. WING 16 5401 Patton Drive, Suite 115 17 Lisle, Illinois 60532-4532 18 (312) 286-3485 19 rebeccajwing@outlook.com 20 21 On behalf of the Witness. 22 23 24 ALSO PRESENT: MR. MATT EDELSTEIN, Economist. 20 21 22 23 CSR License No. 084-003278. 24</p> | <p style="text-align: right;">Page 4</p> <p>1 JAMES DONELSON, 2 called as a witness herein, having been first duly 3 sworn, was examined and testified as follows: 4 EXAMINATION 5 BY MR. BURDEN: 6 Q All right. Mr. Donelson, I'm 7 Ashley Burden. This is Joe Patrick. This is 8 Elizabeth Streit. We're officers of the Commission 9 for the purposes of this proceeding. This is an 10 investigation by the United States Commodity Futures 11 Trading Commission in the matter of Long Leaf 12 Trading Group to determine whether there have been 13 violations of certain provisions of the Commodity 14 Exchange Act and regulations. However, the facts 15 developed in this investigation might constitute 16 violations of other federal or state civil or 17 criminal laws. 18 (Whereupon CFTC Exhibit No. 1 was 19 marked for identification, MM.) 20 Q So I want to hand you what I've marked as 21 CFTC Exhibit 1. 22 MR. BURDEN: And, Counsel, of course 23 I have copies for you -- you know, I do have 24 a copy of this for you, if you'd like it.</p> |

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| <p style="text-align: right;">Page 5</p> <p>1 MS. WING: I like paper.</p> <p>2 BY MR. BURDEN:</p> <p>3 Q Mr. Donelson, prior to the opening</p> <p>4 of the record you were provided with a copy of</p> <p>5 the Commission's Statement to Persons Providing</p> <p>6 Information about Themselves to the CFTC. A copy</p> <p>7 of that statement has now been marked as Exhibit 1.</p> <p>8 Mr. Donelson, have you had an</p> <p>9 opportunity to read the Statement to Persons?</p> <p>10 A Yes, I have.</p> <p>11 Q Do you have any questions about it?</p> <p>12 A No, I don't.</p> <p>13 Q Mr. Donelson, are you represented</p> <p>14 by counsel today?</p> <p>15 A Yes, I am.</p> <p>16 MR. BURDEN: Would counsel please identify</p> <p>17 herself.</p> <p>18 MS. WING: Rebecca J. Wing.</p> <p>19 MR. BURDEN: Ms. Wing, are you representing</p> <p>20 Mr. Donelson as his counsel here today?</p> <p>21 MS. WING: I'm representing him along</p> <p>22 with -- yes.</p> <p>23 MR. BURDEN: I want to go off the record</p> <p>24 for just a moment.</p> | <p style="text-align: right;">Page 7</p> <p>1 Q All right. I want to take a few</p> <p>2 minutes and talk about your personal background,</p> <p>3 professional, educational. Can you tell me a bit</p> <p>4 about what you've done in school?</p> <p>5 A I graduated from Illinois Wesleyan</p> <p>6 with a degree in accounting and German language.</p> <p>7 I'm not going to say the year. It was a long time</p> <p>8 ago. And then I also have my master's in business</p> <p>9 administration from the University of Chicago.</p> <p>10 I also have on my transcripts I did a work study</p> <p>11 in Hamburg, Germany for one semester. And that was</p> <p>12 actually through the University of Cincinnati, even</p> <p>13 though I've never been in Cincinnati in my life.</p> <p>14 Q All right. So you have a Bachelor of</p> <p>15 Science in accounting, is that right?</p> <p>16 A Arts.</p> <p>17 Q Bachelor of Arts, is that what it is?</p> <p>18 Bachelor of Arts in accounting, correct?</p> <p>19 A Yeah.</p> <p>20 Q And an MBA from University of Chicago,</p> <p>21 is that correct?</p> <p>22 A Correct.</p> <p>23 Q Any other degrees?</p> <p>24 A No.</p> |
| <p style="text-align: right;">Page 6</p> <p>1 (Discussion off the record.)</p> <p>2 (Whereupon CFTC Exhibit No. 55 was</p> <p>3 marked for identification, MM.)</p> <p>4 Q Mr. Donelson, I'm handing you what I've</p> <p>5 marked as CFTC Exhibit 55. Is this the subpoena</p> <p>6 pursuant to which you're appearing here today?</p> <p>7 A Um-hmm, yeah.</p> <p>8 Q All right. Mr. Donelson, have you ever</p> <p>9 been interviewed for testimony before?</p> <p>10 A No.</p> <p>11 Q Well, in that case I'm going to go over</p> <p>12 some rules of the road I'm sure your counsel has</p> <p>13 already covered with you. The first is please try</p> <p>14 to give verbal responses to my questions rather than</p> <p>15 nod or shake your head.</p> <p>16 A Yes.</p> <p>17 Q Please try not to talk over me. I will</p> <p>18 try not to talk over you. It happens all the time.</p> <p>19 I'm sure we'll wind up doing it, but let's try not</p> <p>20 to. So I don't ever want to ask you a question</p> <p>21 that you don't understand or that confuses you.</p> <p>22 So if I ask you a question and you're confused,</p> <p>23 do you promise that you will tell me?</p> <p>24 A Yes.</p> | <p style="text-align: right;">Page 8</p> <p>1 Q So let's talk about licenses and</p> <p>2 professional certifications such as Series 3.</p> <p>3 Can you tell me which of those you hold, please.</p> <p>4 A I hold the Series 3. At one time</p> <p>5 I held a Series 27. I think it has since lapsed.</p> <p>6 I'm not sure. And I had a CPA license. I let that</p> <p>7 lapse also. I was doing that when I was doing</p> <p>8 consulting.</p> <p>9 Q All right. So you have a Series 3,</p> <p>10 is that correct?</p> <p>11 A Correct.</p> <p>12 Q And when did you obtain that Series 3,</p> <p>13 please.</p> <p>14 A March of last year.</p> <p>15 Q So March of 20 --</p> <p>16 A I don't know the exact date but,</p> <p>17 yeah, 2018.</p> <p>18 Q So you obtained your Series 3 in March</p> <p>19 of 2018?</p> <p>20 A Um-hmm.</p> <p>21 Q Is that correct?</p> <p>22 A Correct.</p> <p>23 Q And when did you obtain your Series 27,</p> <p>24 please.</p> |

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| <p style="text-align: right;">Page 9</p> <p>1 A I'm thinking back. It would have been 2 2014, October. 3 Q And I think you testified that that 4 lapsed, is that right? 5 A Right. I don't work for a broker-dealer. 6 So, therefore -- the last job I had that I used 7 it was at Jump Trading, and it has since lapsed. 8 It's been two years since I've worked there. 9 Q So is it fair to say that it lapsed in 10 2016? 11 A It lapsed in 2018. 12 Q Do you remember what month? 13 A Probably May. 14 Q All right. So when did your CPA license 15 lapse, please. 16 A Lapsed in October of 2018. 17 Q All right. Any other professional licenses 18 or certifications? 19 A No. 20 Q So let's talk about your employment, 21 and I think probably the thing that makes sense to 22 do is maybe work backwards from Long Leaf Trading. 23 Where did you work before Long Leaf Trading, please. 24 A I was actually doing independent</p> | <p style="text-align: right;">Page 11</p> <p>1 a controller does. My understanding is that 2 they're sort of an accountant, is that right? 3 A Accounting, in this case the 4 accounting. We do some risk management. We 5 do a lot of work with the trading firms in terms 6 of what are their haircuts and things like that, 7 mostly on the equity side. 8 Q All right. And before you worked 9 for Jump Trading what did you do before that, 10 please. 11 A I worked for KCG, which was actually 12 Getco when I worked for them, and then they merged 13 with Knight Trading. So it was all basically the 14 same firm. I was the global controller for that 15 firm from 2007, August 2007 through June of 2015. 16 Q All right. And just for the record, 17 please, what did KCG and Getco and Knight Trading, 18 what did they do? 19 A They are predominantly equity 20 marketmakers, but they are proprietary trading 21 firms that trade almost everything worldwide, 22 cash equities, futures. 23 Q So when you worked for Jump Trading, 24 did you do any trading for them?</p> |
| <p style="text-align: right;">Page 10</p> <p>1 consulting for a period of time and starting 2 up a different business which is still ongoing. 3 It is a software development business. 4 Q And what's that called, please. 5 A Forefront Technologies. It is a middle 6 office software for trading, basically back office 7 stuff. 8 Q Got it. 9 A And before that I worked for Jump Trading 10 as their controller. 11 Q And for how long did you work at Jump 12 Trading, please. 13 A Almost two years. Right about two 14 years. I started in July of -- dates are bad 15 with me. 16 MS. WING: These are the toughest 17 questions. 18 A So I left there in 2017. So I started 19 in 2015. 20 BY MR. BURDEN: 21 Q So you spent approximately two years 22 as Jump Trading's controller? 23 A Right. 24 Q Now, I'm not entirely sure what</p> | <p style="text-align: right;">Page 12</p> <p>1 A No, but I did a lot of analysis of 2 the trades. 3 Q When you say analysis of the trades, 4 what did that entail, please. 5 A Profitability, strategy to make sure that 6 they met risk tolerances. 7 Q Did you design trading strategies for 8 Jump Trading? 9 A No. 10 Q So when you say you worked on trade 11 strategies, what aspects of the strategy did you 12 work on? 13 A The trader would come up with a strategy. 14 We would then run it through our risk tools to find 15 out how much risk, how much margin they needed and 16 then what their expected returns are to say is that 17 an adequate return on risk. 18 Q And when you worked at Jump, did you do 19 any work on options trading strategies? 20 A No. 21 Q What kind of strategies did you work 22 on at Jump? 23 A They were predominantly equity strategies. 24 Q And that means stocks, right?</p> |

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1 A Stocks.
 2 Q All right. So I think you testified
 3 that KCG and Getco and Knight Trading were all
 4 kind of rolled into one firm by the end, is that
 5 right?
 6 A So, yeah, Getco is a separate
 7 company and Knight was a separate company.
 8 Then Knight had kind of the blowup where they
 9 lost 400 million, and Getco then merged into the
 10 company KCG.
 11 Q Okay. So can we just call them KCG
 12 collectively?
 13 A Yeah.
 14 Q All right. So at KCG, did you do any
 15 trading at KCG?
 16 A No, other than -- the only trading we
 17 did was hedging.
 18 Q Did you personally do hedging?
 19 A Yes.
 20 Q And what did you do to hedge KCG's trades?
 21 A We were hedging currencies.
 22 Q So how do you hedge currencies?
 23 A We were buying or selling futures depending
 24 on where we were at.

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1 Q And did you develop the strategies
 2 for buying and selling those futures?
 3 A I was a part of a team that did, yes.
 4 Q And what was your role in that team?
 5 A Basically it was the accounting side,
 6 the treasuries side, the trading side and then
 7 the owners dividing how much risk they were willing
 8 to take in any one currency. So, for example, we
 9 didn't want to have more than \$10 million of Euros
 10 unhedged, so we would move the hedges based on that.
 11 Q And who would decide what the appropriate
 12 hedge was?
 13 A That was myself and the treasurer.
 14 Q So you would determine what, you know,
 15 what -- if you're in futures, what's the right
 16 contract, what's the right month?
 17 A Right.
 18 Q Did you do any work on options at KCG?
 19 A We did look at using options to
 20 hedge. However, the owners did not want that.
 21 They wanted a perfect hedge.
 22 Q So you never used options at KCG?
 23 A Not in that context, no.
 24 Q In any other context?

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1 A Not trading hedges, no.
 2 Q Well, did you have any other --
 3 A I worked with the option team, but
 4 I didn't develop the trades.
 5 Q What did you do for the option team?
 6 A A lot of it had to do with
 7 tax implications and the impact of those tax
 8 implications on the actual trade.
 9 Q So what would you tell the options team
 10 or what would they consult you for?
 11 A The tax treatment of dividend
 12 versus profitability on an option trade. One
 13 is considered a 1256 contract, one is not. They
 14 were wondering why the trade -- why traders got away
 15 from dividends, and this is basically the reason
 16 why. They saw this anomaly going on in the trade.
 17 Q So what did you -- it sounds like
 18 you gave some pretty specific advice to the option
 19 team at KCG.
 20 A Yeah.
 21 Q So what was that advice?
 22 A It was basically stay away from the
 23 dividends.
 24 Q And dividends are --

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1 A So a dividend, a dividend of the stock,
 2 underlying stock.
 3 Q Oh, I see. As opposed to profits or
 4 option trades?
 5 A Right. They're treated differently
 6 from a tax perspective. One's taxed much more
 7 highly than the other. Obviously dividends are
 8 taxed higher.
 9 Q So at KCG you didn't do any options
 10 trading, correct?
 11 A No, we weren't allowed to trade.
 12 Q But at KCG you provided tax advice to the
 13 options trading team there, correct?
 14 A And similar information as what
 15 we did with Jump Trading is review new strategies,
 16 understand what the margins and the risks are.
 17 Q So at KCG you reviewed option
 18 strategies and advised the traders there about
 19 risk implications, is that fair to say?
 20 A Correct.
 21 Q All right. So I'm not sure we need
 22 to go much further back than that but I want to
 23 ask you broadly, other than what we've previously
 24 discussed with respect to Jump and KCG, what is

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| <p style="text-align: right;">Page 17</p> <p>1 your experience with respect to options? And</p> <p>2 I want to kick it off by asking have you ever traded</p> <p>3 options --</p> <p>4 A Yeah, I have.</p> <p>5 Q -- before going to --</p> <p>6 A Yeah, I have traded options.</p> <p>7 Q And when was that, please.</p> <p>8 A Probably from like 2014 on.</p> <p>9 Q So in 2014 you started trading options,</p> <p>10 is that correct?</p> <p>11 A I think so, yeah.</p> <p>12 Q Did you do any options trading before that?</p> <p>13 A No.</p> <p>14 Q And for whom did you trade options</p> <p>15 starting --</p> <p>16 A Personal.</p> <p>17 Q We're talking over each other.</p> <p>18 A Oh, sorry.</p> <p>19 Q We've got to be careful. That's all</p> <p>20 right.</p> <p>21 A My personal trades.</p> <p>22 Q All right. Did you trade for any company</p> <p>23 or other account?</p> <p>24 A No.</p> | <p style="text-align: right;">Page 19</p> <p>1 Q All right. So what was the instrument</p> <p>2 you used as a -- I should say what was the contract</p> <p>3 you used as a hedge for this warrant at KCG?</p> <p>4 A It was a put option.</p> <p>5 Q But a put for what, please.</p> <p>6 A For the stock.</p> <p>7 Q Oh, okay. So it was an equity option?</p> <p>8 A Um-hmm.</p> <p>9 Q Yes?</p> <p>10 A Yes.</p> <p>11 Q Very good.</p> <p>12 A It was. I'm sorry.</p> <p>13 Q It's all right.</p> <p>14 EXAMINATION</p> <p>15 BY MR. PATRICK:</p> <p>16 Q Were all of the options trades that</p> <p>17 you did at thinkorswim, were they equity options?</p> <p>18 A There were a couple futures options.</p> <p>19 Q Which markets did you trade options in?</p> <p>20 A Currencies.</p> <p>21 Q Currencies. Do you remember which</p> <p>22 currencies?</p> <p>23 A Euro and I think the pound, pound</p> <p>24 sterling. I'm sorry.</p> |
| <p style="text-align: right;">Page 18</p> <p>1 Q And did you trade continuously</p> <p>2 for your personal account from 2014 through the</p> <p>3 present?</p> <p>4 A No.</p> <p>5 Q When did you cease trading for your</p> <p>6 personal account?</p> <p>7 A Probably 2017.</p> <p>8 Q And why did you stop trading options</p> <p>9 in 2017?</p> <p>10 A Just too busy to do it.</p> <p>11 Q What clearing firm did you trade through,</p> <p>12 please.</p> <p>13 A Thinkorswim is what I used or</p> <p>14 Interactive Brokers.</p> <p>15 Q There we go. And whose name was the</p> <p>16 account under, please.</p> <p>17 A Mine.</p> <p>18 Q How did you do?</p> <p>19 A Okay. Not fantastic, not great.</p> <p>20 Q Did you make money overall? Did you</p> <p>21 lose money overall?</p> <p>22 A I lost money. But one of them was</p> <p>23 actually a hedge on a warrant I had in KCG, which</p> <p>24 was part of the deal.</p> | <p style="text-align: right;">Page 20</p> <p>1 Q I'm sorry. Did you trade option</p> <p>2 spreads?</p> <p>3 A On a couple occasions, yes. Most</p> <p>4 of the time it was just a pure one-sided trade.</p> <p>5 Q Did you trade any option spreads on</p> <p>6 currencies, currency futures?</p> <p>7 A Yes. When you say an option spread,</p> <p>8 can you be specific as to what you mean by an</p> <p>9 option spread? You're not talking about spreading</p> <p>10 across currencies.</p> <p>11 Q Did you do any spreading across currencies?</p> <p>12 A No, I did not do any spreading across</p> <p>13 currencies. It would only be like a vertical spread</p> <p>14 in a currency.</p> <p>15 Q Calendar spread?</p> <p>16 A No, typically not.</p> <p>17 FURTHER EXAMINATION</p> <p>18 BY MR. BURDEN:</p> <p>19 Q So, Mr. Donelson, other than your</p> <p>20 equity hedge on your KCG warrant, was your trading</p> <p>21 in options profitable between 2014 through 2017?</p> <p>22 A No.</p> <p>23 Q How much did you lose?</p> <p>24 A Maybe \$5,000.</p> |

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1 Q How much would you say you traded
 2 overall during that period? I guess I should ask
 3 what did you put into your trading accounts?
 4 A The trading account only had 30,000 in it.
 5 Q So in 2014 -- so during the life of your
 6 trading from 2014 through 2017 you invested \$30,000,
 7 is that fair to say?
 8 A Um-hmm.
 9 Q Yes?
 10 A Yes, sorry.
 11 Q That's all right. And by the end of 2017
 12 you had \$25,000 left, is that right?
 13 A Yeah, about -- I think it might have
 14 been like 16 or 15, mostly because of the hedge.
 15 Q Got it, okay. So you lost \$5,000
 16 to non-hedged trading between 2014 and 2017 in
 17 options, correct?
 18 A Correct.
 19 Q And then how much on this hedge trade?
 20 A Technically I didn't lose anything but --
 21 Q No, I know. That's right, yes.
 22 A It was I want to say 8,000, something
 23 like that.
 24 Q Well, if you lose on your hedge, you won in

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1 business, didn't you?
 2 A Right.
 3 Q All right. Any other options trading
 4 other than this personal trading between 2014 and
 5 2017 until you went to Long Leaf?
 6 A No, no.
 7 Q All right. What other experience
 8 before joining Long Leaf did you have with respect
 9 to options?
 10 A We used them in risk analysis, things like
 11 that, when I worked for R.R. Donnelley, not options
 12 as you would think of the whole option theory of
 13 what's the option of making this investment versus
 14 some other investment.
 15 Q Well, I think when I ask about
 16 your experiences with options, I'm referring
 17 to options contracts as they're traded at the CME
 18 Group or on ICE.
 19 A Nothing like that.
 20 Q All right. Well, let's switch gears
 21 and talk about Long Leaf Trading. And first let's
 22 talk about, if we could, please, your acquisition
 23 of Long Leaf Trading. So when did you purchase
 24 Long Leaf Trading?

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1 A December 1, 2017 is the acquisition date.
 2 Q All right. So when was your first
 3 contact with Long Leaf Trading -- or I should
 4 ask when did you first become aware of Long Leaf
 5 Trading?
 6 A I'd say August 2017.
 7 Q And how did you become aware of Long
 8 Leaf Trading?
 9 A Well, I didn't know it was Long Leaf
 10 Trading, but it was in BizBuySell.com.
 11 Q What's that?
 12 A It is a business broker site which
 13 lists all the businesses that are out there for
 14 sale.
 15 Q And what was it listed for?
 16 A 1.5 million.
 17 Q And how much did you wind up paying
 18 for it, please.
 19 A 1.5 million.
 20 Q And were you represented in the
 21 transaction?
 22 A By Mrs. Wing.
 23 Q Any other representatives or consultants?
 24 A I had talked to the accountant

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1 of the firm because I had a lot of questions
 2 about obviously the loan, the underlying accounting
 3 behind it, how we were going to get to a final
 4 balance sheet, typical things you would do in
 5 an acquisition.
 6 Q And that was Mr. Coglianese, correct?
 7 A Correct.
 8 Q All right. So Mr. Coglianese, he was
 9 Long Leaf Trading's accountant, correct?
 10 A Correct.
 11 Q So he wasn't your accountant, right?
 12 A Correct.
 13 Q Did you have your own accountant
 14 or consultant, other than Ms. Wing, in connection
 15 with the transaction?
 16 A No. I have done many transactions before.
 17 Q So tell me about that. Most
 18 people will have some kind of investment banker
 19 or consultant. It looks like Mr. Evans certainly
 20 did. But you felt you didn't need one, correct?
 21 A I was comfortable with it.
 22 Q Okay. So tell me about why that was.
 23 It seems like a lot of money. You said you have,
 24 you know, a history of doing transactions. Tell me

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1 about that history, if you would, briefly.
 2 A For 20 years I worked for R.R. Donnelley &
 3 Sons, which is now just R.R. Donnelley. During
 4 that time I was involved with 20 to 25 acquisitions.
 5 I was involved with one acquisition at Getco.
 6 Obviously I was involved with the merger from
 7 KCG to -- from Knight and Getco merging into KCG.
 8 In some cases I took the lead, some cases I was
 9 the financial head, sometimes I was the integration
 10 person. So I've had quite a bit of experience
 11 moving -- combining firms in a business -- in
 12 a large business.
 13 Q So you know what to ask for and what to
 14 look at when you're combining firms or acquiring
 15 firms, is that correct?
 16 A Yes.
 17 Q So what made you want to buy Long Leaf
 18 Trading?
 19 A I like the financial services industry.
 20 I've been in it since 2007, went through 2008,
 21 which is an interesting period of time. I was
 22 looking for a business that I could grow and had
 23 some ideas of how to make an introducing broker,
 24 not just a churn and burn but how do you build

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1 a simple month-over-month profitable type business
 2 for my customers.
 3 Q All right. So what do you mean when
 4 you say that you didn't want an IB to just be churn
 5 and burn? What does that mean, churn and burn, to
 6 you?
 7 A My perception was that most IBs bring
 8 people in. They try to make the home run. When
 9 they make the home run, it's great. If they don't,
 10 they go out of -- you know, the customer loses money
 11 and they leave. That's my perception. I don't know
 12 a lot about introducing brokers.
 13 Q Have you ever worked for an introducing
 14 broker before?
 15 A No.
 16 Q Have you ever used an introducing broker?
 17 A Well, Interactive Brokers is an introducing
 18 broker, isn't it?
 19 Q I don't know.
 20 MS. WING: I can't answer questions.
 21 A I've been pitched by them.
 22 BY MR. BURDEN:
 23 Q All right. There we go.
 24 A Put it that way. I definitely heard

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1 the pitches and a lot of it is -- what I have
 2 heard is, you know, we can pick the bottoms and
 3 tops and we can pick the winners. My view is nobody
 4 can pick the winners and losers. You have to build
 5 it correctly.
 6 Q So you say your view is that no one
 7 can pick the winners and losers. What do you mean
 8 by that?
 9 A What I mean by that is that if you
 10 told me today, you know, are, say, soybeans going
 11 to go up or down, there's so many factors involved
 12 with that it's hard to say that somebody could just
 13 pick that and say I'm going to buy a future and
 14 you're going to make money on it. On the other
 15 hand, if you build the structure correctly, you
 16 can profit from it moving. Can you tell it's going
 17 to move or not, yes. You know, is it going to be
 18 volatile, is it going to do those type of things.
 19 Q So your testimony is that a trader
 20 can tell if a commodity will move, is that right?
 21 A I'm not -- can you rephrase that?
 22 Q So I guess your testimony was something
 23 to the effect that a trader can't tell if soybeans
 24 are going to go up or down, right? That's what

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1 you testified?
 2 A That's been my experience with the firms
 3 I worked with.
 4 Q Yeah. There's too many factors and
 5 a person can't know even if they have a good idea,
 6 correct?
 7 A Correct.
 8 Q So how can a person tell if a particular
 9 market is going to be volatile or not?
 10 A Usually you can tell by the actual
 11 option pricing. You can see it in the pricing
 12 of the option.
 13 Q So I want to come back to that, but
 14 let's sort of stay on the acquisition of Long Leaf
 15 Trading. I think you testified before that you had
 16 thought you could find a simple way to make money
 17 month after month for customers, is that right?
 18 A Correct.
 19 Q And that was one of the reasons why
 20 you wanted to purchase Long Leaf Trading, correct?
 21 A Right.
 22 Q So what was that idea? How were
 23 you going to make profit month after month for
 24 customers?

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1 A There's a couple trades that we do and
 2 also one of the people on the staff, Scott Gecas,
 3 had multiple years of options trading experience
 4 and I had talked to him after the acquisition about
 5 other ways to make trades. But the idea of being
 6 nondirectional, low risk, those type of trades,
 7 that's how we structured our trades. That's how
 8 we structured trying to make money for our clients.
 9 Q So what other introducing brokers did you
 10 look into purchasing?
 11 A No other ones.
 12 Q Did you sort of have the idea you
 13 wanted to purchase an introducing broker and Long
 14 Leaf Trading came up or how did this idea --
 15 A I was looking at quite a few different
 16 businesses.
 17 Q What other businesses were you looking at?
 18 A Looking at some distribution
 19 businesses, trying to fall back on what I -- my
 20 days at Donnelley.
 21 Q What does Donnelley do, please.
 22 A Well, Donnelley was the world's largest
 23 printer. It may still be. I don't know. But it
 24 did printing distribution, basically everything,

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1 large-scale printing like the old days of the
 2 Sears catalogue, that type of stuff. I did not
 3 look at buying a print business because I knew
 4 that was not going to be there, but the distribution
 5 arm is a big part of it. So I was looking at some
 6 distribution businesses, basically wholesalers.
 7 Q What other businesses were you looking
 8 at purchasing?
 9 A One was down in South Carolina. They did
 10 headsets, things like that, mostly for the aviation
 11 industry. Another one was a distribution business
 12 down in North Carolina was one thing I was also
 13 looking at because I really didn't want to live
 14 in Chicago anymore.
 15 Q Did you look at purchasing any financial
 16 services businesses?
 17 A No. Most them were priced up in
 18 the very high millions to get into a full-scale
 19 financial services business.
 20 Q So Long Leaf Trading was really the
 21 only viable financial service business that you
 22 could really purchase?
 23 A Right, correct.
 24 Q So when did talks start for the purchase

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1 of Long Leaf Trading, please.
 2 A September.
 3 Q Of 2017?
 4 A 2017, I'm sorry.
 5 Q And who was your point of contact for
 6 that, please.
 7 A That's Dennis Hansmann. He is the business
 8 broker.
 9 Q All right. And so when you were --
 10 did you do due diligence in connection with your
 11 purchase of Long Leaf Trading?
 12 A Yes, and he would provide all the documents
 13 through Dropbox usually.
 14 Q What documents did you look at in
 15 connection with the due diligence for the Long
 16 Leaf Trading acquisition?
 17 A Financials, the complaint log,
 18 their compliance, the whole series of documents,
 19 making sure that they're in good standing from
 20 a corporation standpoint, you know. Basically
 21 a long list of stuff that we asked them to provide
 22 us.
 23 Q Got it. What were the most important
 24 considerations in terms of your purchase of Long

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1 Leaf Trading? What was most important to you?
 2 A Most important part is they had a clean
 3 compliance record, which they showed, that they had
 4 Long Leaf clients, which they showed, and that they
 5 were kind of on the same page in terms of not trying
 6 to hit the home run, not trying to -- you know,
 7 trying to be consistent, profitable for the clients.
 8 That was what was represented to me.
 9 Q All right. Now, of course, the firm's
 10 profitability was important to you, correct?
 11 A Correct.
 12 (Whereupon CFTC Exhibit No. 56 was
 13 marked for identification, MM.)
 14 Q All right. Mr. Donelson, I want
 15 to hand you what I've marked as CFTC Exhibit 56.
 16 If you'd take a look at this document for a moment,
 17 please, and tell me if you recognize this.
 18 A I do.
 19 Q All right. What do you recognize this
 20 document to be?
 21 A This was provided to me as their
 22 profitability for 2017 through the end of September.
 23 Q All right. And what did this show?
 24 A It showed a very profitable firm.

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| <p style="text-align: right;">Page 33</p> <p>1 Q And how much money did it make during 2 the first nine months of 2017? 3 A \$583,633. 4 Q So did this turn out to be correct once 5 you got control of the firm? 6 A Yes, these numbers were correct. 7 (Whereupon CFTC Exhibit No. 57 was 8 marked for identification, MM.) 9 Q All right. Mr. Donelson, I want 10 to hand you what I've marked as CFTC Exhibit 57. 11 As you'll see, it's a group exhibit comprised of 12 a number of different documents. Do you recognize 13 Exhibit 57, Mr. Donelson? 14 A Yes, I do. 15 Q Can you tell me what it is, please. 16 A They are the monthly profit and 17 loss statements from Long Leaf Trading from 2016. 18 Q And did you receive these documents in 19 connection with the due diligence? 20 A Yes, I did. 21 Q And from whom did you receive them? 22 A From Mr. Hansmann. 23 Q And as you will see, Exhibit 57, 24 the months are inexplicably out of order. So</p> | <p style="text-align: right;">Page 35</p> <p>1 A Well, it's because the files are -- 2 you're doing it based on the file name. The file 3 name's got to be in alphabetical -- 4 Q That's a good thought. I think 5 that's correct. So let's look at Exhibit 57, 6 please. And if you see the January profit and loss, 7 what's that showing for profit for January? 8 A 60,287. 9 Q Did you consider that that was good? 10 A It was factual. It's a good profit. 11 Q All right. So let's look at February, 12 please. What profit do we have for -- 13 A 46,192.35. 14 Q And how about for March? 15 A 39,512.61. 16 Q How about for April? 17 A 42,091.83. 18 Q How about for May? 19 A 55,158.81. 20 Q How about for June? 21 A 50,103.87. 22 Q How about for July? 23 A 52,312.43. 24 Q How about for August?</p> |
| <p style="text-align: right;">Page 34</p> <p>1 what I'd like us to do, if we could, please, 2 is grab January -- 3 A They're in alphabetical order. 4 Q They might be. 5 A They are. 6 Q Oh, very good, yeah. This must have 7 been how they were produced, so I guess it's not 8 entirely my fault. But let's take a moment, if we 9 could, please, to put them in order because I'm 10 going to walk you through each month, and I promise 11 it will be very, very, quick. So in Exhibit 57 do 12 you see the profit and loss statement for January -- 13 MS. WING: Why don't you give him 14 a moment to put it in order. 15 BY MR. BURDEN: 16 Q Okay. I was going to -- 17 A I smashed my finger earlier this year, 18 so I don't have any feeling in it. Okay, I've put 19 them in order. 20 MS. WING: I think that's the first 21 time I've ever had it in alphabetical order 22 instead of chronological. 23 BY MR. BURDEN: 24 Q Now, I will say it was produced that way.</p> | <p style="text-align: right;">Page 36</p> <p>1 A 64,261.12. 2 Q How about for September? 3 A 77,465.29. 4 Q In October it looks like it's increasing, 5 is that right? 6 A Correct. 7 Q So what's the profit for October? 8 A 80,764.31. 9 Q November? 10 A 105,952.60. 11 Q And December, what's it at there, please. 12 A 52,889.12. 13 Q So I didn't see an omnibus 2016 P&L 14 statement in the production. But just from looking 15 at it, do you recall what Long Leaf Trading's 16 profits were for 2016? 17 A I don't know the exact number, but it 18 was -- there should be an audited set of financials 19 that would have that information. 20 Q Did the profit numbers that we see 21 in Exhibit 57, were those accurate once you got 22 control of the firm? 23 A Yeah, the audited financials were correct. 24 Q Exhibit 57, were those numbers correct?</p> |

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| <p style="text-align: right;">Page 37</p> <p>1 MS. WING: If you know.</p> <p>2 A Yeah, that's what the financial ledger</p> <p>3 tells you. I don't know if there should have been</p> <p>4 some costs in one month or another, but in total it</p> <p>5 was correct.</p> <p>6 BY MR. BURDEN:</p> <p>7 Q In connection with the purchase</p> <p>8 of Long Leaf Trading did you receive any revenue</p> <p>9 projections?</p> <p>10 A No.</p> <p>11 Q Did you ask for any revenue projections?</p> <p>12 A Yes, but they would not provide them.</p> <p>13 Q Why not?</p> <p>14 A It's typical in an acquisition</p> <p>15 that they don't do that. They don't want you to</p> <p>16 have a revenue projection, especially in this type</p> <p>17 of business which depends on a lot of different</p> <p>18 factors. It's not a contract business per se.</p> <p>19 Q Did you perform your own revenue</p> <p>20 projections?</p> <p>21 A Yes.</p> <p>22 Q What did you project?</p> <p>23 A Just I bolted for the SBA loan.</p> <p>24 They needed a full business plan, but I kind</p> | <p style="text-align: right;">Page 39</p> <p>1 Q Yes?</p> <p>2 A Yes.</p> <p>3 Q How about the third year?</p> <p>4 A Yes. It showed, you know, modest growth.</p> <p>5 Nothing --</p> <p>6 Q All right. In connection with the</p> <p>7 acquisition of Long Leaf Trading, did you request</p> <p>8 results of customer trading, i.e., how the customers</p> <p>9 did?</p> <p>10 A I did, but they would not provide it.</p> <p>11 Q When did you request those results, please.</p> <p>12 A Sometime in October.</p> <p>13 Q Of 2017?</p> <p>14 A Of 2017, correct.</p> <p>15 Q All right. And who did you request</p> <p>16 them from?</p> <p>17 A I worked directly with Dennis. I only</p> <p>18 met with -- Dennis Hansmann. So all the requests</p> <p>19 went through him.</p> <p>20 Q So you asked Dennis Hansmann for customer</p> <p>21 results, is that correct?</p> <p>22 A Um-hmm.</p> <p>23 Q Yes?</p> <p>24 A Yes.</p> |
| <p style="text-align: right;">Page 38</p> <p>1 of expected a small amount of growth. I did not</p> <p>2 put a big number in. There's two revenue streams,</p> <p>3 obviously the trading revenue and then they also</p> <p>4 had an introducing broker revenue from a European</p> <p>5 CFD dealer -- contract for difference dealer --</p> <p>6 from one of their customers overseas. And that</p> <p>7 was in their -- in the parlance would be it's</p> <p>8 almost pure profit. They don't really do anything.</p> <p>9 They just receive an introducing broker fee.</p> <p>10 Q So how many years of projections did you</p> <p>11 do for this SBA loan?</p> <p>12 A Three.</p> <p>13 Q And what did you project for the first</p> <p>14 year approximately?</p> <p>15 A It's been a long time since I did it.</p> <p>16 Q If you don't remember, that's okay.</p> <p>17 But, I mean, if you could give me a ballpark --</p> <p>18 A It wasn't substantially higher than what</p> <p>19 the number was in 2017.</p> <p>20 Q But a little bit higher?</p> <p>21 A Yeah.</p> <p>22 Q And was it higher still in the second</p> <p>23 year of the projections?</p> <p>24 A (Nodding).</p> | <p style="text-align: right;">Page 40</p> <p>1 Q So what did you ask him for exactly</p> <p>2 in October of 2017?</p> <p>3 A I asked him for -- they made the</p> <p>4 representation that they'd had clients there</p> <p>5 from four to seven years. I asked, okay, could</p> <p>6 you tell me which client, you know, could you show</p> <p>7 me that and also what their result is.</p> <p>8 Q And what did Mr. Hansmann tell you?</p> <p>9 A That he would talk to the owner.</p> <p>10 Basically he was the go-between so -- and then</p> <p>11 came back and said they would not provide that</p> <p>12 information.</p> <p>13 Q Did he tell you why?</p> <p>14 A No.</p> <p>15 Q Did you ask him why?</p> <p>16 A I asked him why. He said, well,</p> <p>17 that's proprietary information. That's what was</p> <p>18 told me.</p> <p>19 Q Did you push back on that at all?</p> <p>20 A Yes.</p> <p>21 Q How did you do that?</p> <p>22 A I said, well, how do I know if</p> <p>23 you're telling me the truth on issues related to,</p> <p>24 you know, how long your clients have been there.</p> |

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1 That's one thing that would draw me to the business.
 2 Q And what did Mr. Hansmann say in response
 3 to that?
 4 A So they did get back to me with people
 5 who had been there the longest but did not show me
 6 profitability.
 7 Q When you say they got back to you with
 8 people that had been there the longest, how did that
 9 go down? Did you get an email? Did they just tell
 10 you?
 11 A They -- I'm trying to remember.
 12 There was a document sent to me that had a number,
 13 you know, their account number because they didn't
 14 release the name of when they opened the account.
 15 Q Okay. So you got a document with an
 16 account number on it?
 17 A I believe so, yes.
 18 Q How many account numbers?
 19 A Maybe ten.
 20 Q Did it have names?
 21 A No, it did not have names.
 22 Q What else did the document say?
 23 A It was just the date it was opened,
 24 that it was still open.

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1 Q Was this a document that Long Leaf
 2 Trading had created or was it something from the,
 3 you know, the FCM?
 4 A I don't know. It was not -- I got
 5 it but I don't know who produced it or how it was
 6 produced.
 7 Q Well, what did you do with that
 8 information? How did you use that to confirm
 9 this representation that Mr. Hansmann had made?
 10 A He had ten clients that had
 11 been there quite a long time. And, you know,
 12 it kind of confirms that, yes, he does have clients
 13 that had been there a significant amount of time.
 14 Now, after the fact some of those were self-traders.
 15 They weren't part of a program. They just traded
 16 on their own.
 17 Q Got it. So did you talk to any customers
 18 of Long Leaf Trading --
 19 A No.
 20 Q -- before the purchase?
 21 A No, I didn't. I looked on Better
 22 Business Bureau. I looked on all the other things
 23 looking for any negative reviews, negative comments.
 24 Q Did you see any?

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1 A There were a couple, which in any
 2 business you're going to always have a couple, some
 3 client who's not happy.
 4 Q All right. Let's come back to that,
 5 but I want to keep going on this document. So
 6 I think you testified that you received a document
 7 with ten account numbers on it, correct?
 8 A I believe so, yes.
 9 Q And Mr. Hansmann had represented
 10 to you that these were customers that had been
 11 there for four to seven years, is that correct?
 12 A Correct.
 13 Q According to Mr. Hansmann, were those the
 14 only customers that had been there for four to seven
 15 years or just like ten of many?
 16 A He didn't make any representation of which,
 17 was it all or some.
 18 Q Did you ask him?
 19 A I asked him and he said he didn't know.
 20 Q Did you ask him to find out?
 21 A Yes.
 22 Q Did he?
 23 A I don't remember if he ever answered the
 24 question.

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1 Q So I don't understand what you were
 2 supposed to do with this document. It didn't have
 3 any names on it. It doesn't sound like you knew who
 4 created it. Did this give you comfort? Like did
 5 you think this document answered the question of
 6 do customers stay at Long Leaf Trading?
 7 A Yes and no. Yes, there are customers
 8 that have been there a while and, no, it didn't
 9 give me great comfort that everything was true.
 10 But as I pushed, I never got much more information.
 11 Q But you went through with the purchase
 12 anyway, correct?
 13 A Yes.
 14 Q All right. So I think you testified
 15 before that Mr. Hansmann had -- you know, I'll just
 16 ask you. Prior to the acquisition did Mr. Hansmann
 17 tell you anything about the profitability of
 18 customer trading, whether customers made money
 19 or not?
 20 A No, he never did.
 21 Q Did Mr. Evans ever say anything to you
 22 about that?
 23 A I only met with him twice before the
 24 acquisition. They implied that they were profitable

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| <p style="text-align: right;">Page 45</p> <p>1 but never flat out said it.</p> <p>2 Q How did Mr. Evans imply that customer</p> <p>3 trading was profitable for customers?</p> <p>4 A Basically saying, you know, they wouldn't</p> <p>5 stay with us this long if they weren't happy with</p> <p>6 our services, and that was repeated multiple times.</p> <p>7 Q And who said that to you?</p> <p>8 A Both Mr. Evans and Mr. Hansmann,</p> <p>9 but I'm assuming he was saying what Tim had told</p> <p>10 him to say.</p> <p>11 Q And did they say this to you verbally?</p> <p>12 A Yes.</p> <p>13 Q Is there anywhere I can find it in writing?</p> <p>14 A I don't know.</p> <p>15 Q So I know I asked you this, but</p> <p>16 I apologize because we're going to come back to</p> <p>17 it. Did you ever ask Mr. Hansmann if customers made</p> <p>18 money trading at Long Leaf?</p> <p>19 A Yes, I did.</p> <p>20 Q When did you ask Mr. Hansmann that?</p> <p>21 A In October.</p> <p>22 Q Of 2017?</p> <p>23 A Of 2017.</p> <p>24 Q All right. And how did you ask him?</p> | <p style="text-align: right;">Page 47</p> <p>1 the firm, I'm going to find out -- I need to know</p> <p>2 that information.</p> <p>3 Q That's what you said to Mr. Hansmann?</p> <p>4 A Um-hmm.</p> <p>5 Q Yes?</p> <p>6 A Yes, I'm sorry.</p> <p>7 Q That's all right. We'll get you</p> <p>8 there eventually. By the end of the day you'll</p> <p>9 be doing perfectly. Well, how did Mr. Hansmann</p> <p>10 respond to that?</p> <p>11 A Once again, he is the liaison between</p> <p>12 me, so he said he'll go back to talk to the owner.</p> <p>13 Q And did he return to you with more</p> <p>14 information from Mr. Evans?</p> <p>15 A No.</p> <p>16 Q So did you ever get information prior to</p> <p>17 the acquisition of Long Leaf Trading about whether</p> <p>18 customers made money?</p> <p>19 A No.</p> <p>20 Q Why not? I mean, I think you just</p> <p>21 testified that that was an important thing. Why did</p> <p>22 you let that go?</p> <p>23 A Probably made a mistake. I should have</p> <p>24 looked harder or pushed harder on it.</p> |
| <p style="text-align: right;">Page 46</p> <p>1 Was it over email? Was it orally?</p> <p>2 A Almost everything was done via</p> <p>3 voicemail. I mean, not voicemail but conversations</p> <p>4 on the phone. I probably talked to him two to three</p> <p>5 times a day.</p> <p>6 Q Oh, got it. So --</p> <p>7 A I mean, it's a little less formal than</p> <p>8 a normal acquisition process.</p> <p>9 Q So it sounds like you probably</p> <p>10 asked Mr. Hansmann more than once whether clients</p> <p>11 made money trading with Long Leaf, is that right?</p> <p>12 A Right, correct.</p> <p>13 Q How many times did you ask Mr. Hansmann?</p> <p>14 A I don't know. More than five.</p> <p>15 Q And what did he say to you when you</p> <p>16 asked the first time?</p> <p>17 A First time was that he would go back</p> <p>18 and talk to the owner because he didn't actually</p> <p>19 have knowledge of it one way or the other, and then</p> <p>20 he came back to me and said that's considered</p> <p>21 proprietary information.</p> <p>22 Q All right. And what did you say in</p> <p>23 response to that?</p> <p>24 A I said, well, if I'm going to buy</p> | <p style="text-align: right;">Page 48</p> <p>1 Q Did you ask Mr. Hansmann or Mr. Evans</p> <p>2 for redacted customer statements?</p> <p>3 A We did get an equity run. I don't</p> <p>4 think it was redacted, but that doesn't really</p> <p>5 tell you profitability. It tells you how much is</p> <p>6 in accounts.</p> <p>7 Q And did you get that equity run for all</p> <p>8 of the Long Leaf Trading accounts or just for one</p> <p>9 account?</p> <p>10 A All of them.</p> <p>11 Q But it doesn't tell you whether the</p> <p>12 customers were profitable?</p> <p>13 A No. An equity run just confirms balances.</p> <p>14 FURTHER EXAMINATION</p> <p>15 BY MR. PATRICK:</p> <p>16 Q Was this an equity run for Gain Capital?</p> <p>17 A Yes, it was from Gain Capital.</p> <p>18 Q And it wasn't redacted?</p> <p>19 A No, no. This was at closing to make --</p> <p>20 as part of the closing process to make sure that</p> <p>21 the balances are what they say they are, so on and</p> <p>22 so forth, the transfer of balances.</p> <p>23 Q Oh, so you did not get this equity run</p> <p>24 as part of your due diligence?</p> |

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| <p style="text-align: right;">Page 49</p> <p>1 A No.</p> <p>2 Q You received an equity run after</p> <p>3 you had already agreed to purchase the company</p> <p>4 and at closing you received an equity run --</p> <p>5 A Right.</p> <p>6 Q -- so that you can ensure that the</p> <p>7 balances were correct --</p> <p>8 A Right.</p> <p>9 Q -- in the customers' accounts?</p> <p>10 A Correct.</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MR. BURDEN:</p> <p>13 Q Well, I want to push back a little bit. I</p> <p>14 still -- I mean, did you threaten to not go through</p> <p>15 with the acquisition if you didn't receive some kind</p> <p>16 of customer trading results?</p> <p>17 A No, I did not.</p> <p>18 Q Why?</p> <p>19 A It was a bad decision on my part.</p> <p>20 Q Wasn't this important to you to know --</p> <p>21 let me rephrase that. Was it important to you</p> <p>22 to know if customers made money trading with Long</p> <p>23 Leaf?</p> <p>24 A Yes, it is. And I probably was too</p> | <p style="text-align: right;">Page 51</p> <p>1 the systems and the processes that they were</p> <p>2 using. I was unfamiliar with their system and</p> <p>3 just understanding kind of what -- how it works,</p> <p>4 where they get their leads from, how they -- you</p> <p>5 know, those are -- all information pieces that we're</p> <p>6 trying to get out of that were not easy as just some</p> <p>7 document coming across the board.</p> <p>8 Q So you mentioned systems and processes.</p> <p>9 What did you mean by systems and processes?</p> <p>10 A They had a CRM system called InsideSales,</p> <p>11 which has a power dialer on it. I've learned a lot</p> <p>12 about it obviously since, but I had no knowledge</p> <p>13 of that system and how it worked. And then their</p> <p>14 processes of what is their sales process, how did</p> <p>15 they use their staff, how did they get trades out</p> <p>16 the door, how did they get approvals in, you know,</p> <p>17 those type of basic processes because they had</p> <p>18 12 people. They had openers and closers. So the</p> <p>19 opener's job was just to dial, dial, dial, dial,</p> <p>20 dial. And then the closers were once they got</p> <p>21 through a certain step, it was kind of their final</p> <p>22 process. And just understanding why somebody's in</p> <p>23 that role versus this role versus some other role.</p> <p>24 Q Okay. So you said quite a bit there.</p> |
| <p style="text-align: right;">Page 50</p> <p>1 trusting.</p> <p>2 Q Well, why didn't you seek verification</p> <p>3 from Mr. Hansmann or Mr. Evans?</p> <p>4 A Like I said, I made a mistake. I wish</p> <p>5 I had done that, but I did not.</p> <p>6 FURTHER EXAMINATION</p> <p>7 BY MR. PATRICK:</p> <p>8 Q You said you met with Evans two times</p> <p>9 prior to the acquisition?</p> <p>10 A I think it was two times, yes.</p> <p>11 Q When were those meetings that you had</p> <p>12 with Mr. Evans?</p> <p>13 A One was in late October and one I think</p> <p>14 was in November.</p> <p>15 Q And what did you talk about at those</p> <p>16 meetings?</p> <p>17 A I talked about -- I talked to him</p> <p>18 about his compliance record and, you know, what</p> <p>19 is not in those documents, for example, the fact</p> <p>20 that they have a clean NFA record. And I have</p> <p>21 the complaint log, you know, how do they handle</p> <p>22 complaints, how do they -- you know, what do they</p> <p>23 consider a complaint, just to make sure I understood</p> <p>24 what the complaint log was. Talked to him about</p> | <p style="text-align: right;">Page 52</p> <p>1 Did you talk at all with Mr. Evans about sort</p> <p>2 of the business model, in other words, the trading</p> <p>3 model that he was employing?</p> <p>4 A Yeah, yeah, the trading model, yes.</p> <p>5 Q And you talked about that with</p> <p>6 Mr. Evans at these meetings in October and November</p> <p>7 of 2017?</p> <p>8 A Correct.</p> <p>9 Q And what did he tell you about the trading</p> <p>10 model at that time?</p> <p>11 A The trading model, it was basically</p> <p>12 putting on four short condors, iron condors, and</p> <p>13 they'd do this only once a month so that everybody</p> <p>14 would have four positions. They would not be</p> <p>15 correlated in that type of trade, that there's</p> <p>16 not a lot to do other than sit and wait because</p> <p>17 it's a time decay trade. Represented that, you</p> <p>18 know, you only need to win three out of four to</p> <p>19 make money in a month, that they're all equally</p> <p>20 weighted, that this way you had more time to run</p> <p>21 the sales model versus just to sit there and trade,</p> <p>22 trade, trade and that basically everybody -- all</p> <p>23 the customers in that program basically had the</p> <p>24 same trades on.</p> |

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1 It wasn't that everybody had different trades.
 2 Then there was also a group of people that were
 3 self-traders, which were -- they did whatever
 4 they felt like doing and we just had to make sure
 5 they weren't blowing through margin, things like
 6 that.
 7 Q So for the four recommended trades,
 8 did you ask Mr. Evans for any information about
 9 the trades that he had been putting on month after
 10 month so that you could get an idea about whether
 11 or not this was a viable strategy?
 12 A I saw a few that he showed me of trades
 13 that were profitable, but I didn't see every single
 14 trade they put on.
 15 Q And when you say you saw them, what do you
 16 mean by that, you saw them?
 17 A He showed me the trade, you know, the
 18 trade recommendation that went out, you know. Like
 19 here's what it is, here's the four legs, here's how
 20 much you collect.
 21 Q So he'd show you the actual document that
 22 went out to clients?
 23 A Yeah, it was a trade recommendation sheet,
 24 yeah.

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1 Q And did you keep that sheet and then
 2 kind of go back --
 3 A I took it -- he said I couldn't have
 4 it permanently prior to the acquisition. He said
 5 the trade strategy was proprietary.
 6 Q Okay. So you had no way to analyze
 7 the trade to determine whether or not what he was
 8 telling you about the entry and exit points or the
 9 strikes or anything about the trade was actually
 10 accurate?
 11 A No, not really.
 12 FURTHER EXAMINATION
 13 BY MR. BURDEN:
 14 Q Sorry, let me ask that a different
 15 way. It sounds like Mr. Evans showed you a handful
 16 of trade recommendations and told you that those are
 17 profitable for his clients, is that right?
 18 A Um-hmm. Yes, I'm sorry.
 19 Q That's all right. What did you do
 20 to confirm that the trade recommendations were
 21 in fact profitable for clients?
 22 A Well, I could remember what the
 23 strikes were and you can kind of play back where
 24 it was. And as long as it ended -- if the option

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1 ended in the strike, inside the strikes, it would
 2 be a profitable trade. So it wasn't hard to confirm
 3 that those trades would have made money.
 4 Q But did you go and confirm that
 5 the strike price fell within the boundaries of
 6 the trade?
 7 A Um-hmm, yes.
 8 Q And how did you do that?
 9 A You can look up historical pricing on the
 10 CME in multiple places.
 11 Q So how were you able to do that if
 12 Mr. Evans hung on to those recommendations?
 13 A I just -- you have to just remember what
 14 the two strikes were.
 15 Q So you remembered?
 16 A Right.
 17 Q And then you went back to the office and
 18 you checked, right?
 19 A Um-hmm.
 20 Q Yes?
 21 A Yes.
 22 MS. WING: We'll break you.
 23 BY MR. BURDEN:
 24 Q How many recommendations did Mr. Evans

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1 show you?
 2 A Three or four. I can't remember the
 3 exact number.
 4 Q Did Mr. Evans show you any recommendations
 5 that were not profitable?
 6 A No.
 7 Q Did you ask Mr. Evans to show you some
 8 not profitable recommendations?
 9 A Well, I didn't know whether they were
 10 profitable or not when he showed them to me. He
 11 said they were profitable trades -- or he showed me
 12 trades. He didn't say whether they were profitable
 13 or not. He just said this is the trade structure.
 14 Q Got it.
 15 A I'm sorry if I ever said that he --
 16 I don't think he ever made a representation that
 17 they were profitable or not profitable trades.
 18 It was more about these are the trade -- more
 19 about the style and the structure of the trade
 20 than it was, hey, this is a profitable trade,
 21 that's not.
 22 Q This is what it looks like when it goes
 23 out the door?
 24 A Yeah. And he represented that, you

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|--|--|
| <p style="text-align: right;">Page 57</p> <p>1 know, they don't win every trade, as we do now. 2 Well, we can't -- I would never make that 3 representation. 4 Q Did Mr. Evans tell you how many trades 5 they win or lose? 6 A Not that I know of. 7 Q Did you ever ask Mr. Donelson how 8 many trades win or lose that Long Leaf Trading 9 recommends? 10 MS. WING: He's Mr. Donelson. 11 MR. BURDEN: I meant Mr. Evans. Let me 12 do that again. Thank you. 13 A I'm not sure I understand the question. 14 Q Did you ever ask Mr. Evans, well, how 15 many of your trade recommendations win, how many 16 lose? 17 A Not in so many words, I guess. I'm 18 weighing what I ask and what you're asking me. 19 Q What did you ask him, how about that? 20 A Okay. I asked him, well, what's your 21 percentage winners. 22 Q And what did Mr. Evans say? 23 A And he said, you know, we're right 24 at the statistics that would tell you that you</p> | <p style="text-align: right;">Page 59</p> <p>1 to mean that 76.5 percent of the recommended trades 2 were winners, is that correct? 3 A Correct, I implied it. 4 Q Did you ask for corroboration of that? 5 A I had asked him again for profitability 6 of customers. He did not want to provide it to me. 7 Q I still don't understand why you didn't 8 sort of insist upon it. 9 A I made a mistake. I was too naive. 10 Q But why trust Mr. Evans? Did you know 11 Mr. Evans from anywhere? 12 A No, I did not. 13 Q Did you know Mr. Hansmann from anywhere? 14 A No. 15 Q All right. So I want to go back. 16 You said you had done some due diligence and that 17 you had looked for customer reviews online, is that 18 right? 19 A Yeah. 20 Q Where did you look, please. 21 A Better Business Bureau. There's always 22 Google reviews. 23 Q Where else, please. 24 A That's the two main places you would</p> |
| <p style="text-align: right;">Page 58</p> <p>1 should be about 75 percent. 2 Q And what -- 3 A And they play out over a period of 4 time. They aren't month over month. Any month 5 you could win all four, any month you could lose 6 all four, which given the statistics that they were 7 working with, yes, makes sense. 8 Q What did that mean to you? What did 9 you interpret that statement by Mr. Evans to mean? 10 A Is that in the long run it would make 11 profits, but it may not be consistent month over 12 month in terms of making profits. 13 Q Yeah, but I think your testimony was 14 that you asked Mr. Evans how many of your trades 15 that you recommend are winners. That's what you 16 asked him, right? 17 A I think that's what I said, yeah. 18 Q And what did Mr. Evans say? 19 A He says we hit the -- right about 20 at this statistical level, and we had talked 21 about before the CME study and the 76 percent. 22 So he was implying that it was 76 percent. Did he 23 ever say that specifically, no. 24 Q So you understood Mr. Evans' response</p> | <p style="text-align: right;">Page 60</p> <p>1 see reviews. 2 Q Are those the two places you looked? 3 A Yeah. 4 Q Did you look anywhere else? 5 A No. 6 Q What did you see in terms of reviews? 7 A Kind of -- on the Better Business 8 Bureau I don't think I saw anything at all. 9 On the Google reviews there was like one one-star 10 one that had no document -- nothing behind it, and 11 I recognized the name from what he gave me on the 12 complaint log where he had paid back this person X 13 amount of dollars. I don't know, very unhappy with 14 the service or something like that. His last name 15 was Patel. And then the others were kind of a 16 mixed -- talked about service and things like that 17 but nothing glaring. 18 Q So it sounds like you looked at 19 Better Business Bureau before you purchased Long 20 Leaf Trading and there was really nothing on there, 21 is that right? 22 A As I remember, yes. 23 Q All right. And you looked at Google 24 and there was one really bad review from this person</p> |

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| <p style="text-align: right;">Page 61</p> <p>1 named Patel, correct?</p> <p>2 A I think that was his name, yeah.</p> <p>3 Q And the rest of the reviews that you saw</p> <p>4 were mixed, is that right?</p> <p>5 A Um-hmm, right.</p> <p>6 Q And so mixed, I mean, to me mixed</p> <p>7 means some good, some bad. Is that what it means</p> <p>8 to you?</p> <p>9 A They were -- I don't know that I would</p> <p>10 characterize it that way.</p> <p>11 Q Okay. What does that mean, mixed?</p> <p>12 A They were -- I'm trying to think of</p> <p>13 the right words. There were some that were kind</p> <p>14 of I'm not real happy with it and some that I'm</p> <p>15 kind of happy with it, but it was not -- it wasn't</p> <p>16 like clear down here and clear up here. It was</p> <p>17 more kind of in the middle. They were like two</p> <p>18 or three stars. They were noncommittal is the</p> <p>19 best way I would think about saying them. They</p> <p>20 didn't really say one way or the other.</p> <p>21 Q Were there any really favorable reviews</p> <p>22 on Google that you saw for Long Leaf Trading?</p> <p>23 A I think there was one.</p> <p>24 Q But most of the rest of them were two</p> | <p style="text-align: right;">Page 63</p> <p>1 A -- with her insight.</p> <p>2 MR. BURDEN: Let the record reflect</p> <p>3 that Mr. Donelson is pointing towards Ms. Wing.</p> <p>4 THE WITNESS: Oh, I'm sorry.</p> <p>5 MS. WING: And I want to caution my</p> <p>6 client about talking about any conversations</p> <p>7 we had because it's attorney-client privilege.</p> <p>8 MR. BURDEN: Yes, I'm sure you've briefed</p> <p>9 Mr. Donelson on attorney-client privilege.</p> <p>10 Q I don't think I'm going to invade that.</p> <p>11 But, Mr. Donelson, if I do, you're going to take</p> <p>12 your breath and then Ms. Wing will object on the</p> <p>13 basis of attorney-client privilege. And if you</p> <p>14 choose to accept your counsel's advice and not</p> <p>15 waive the privilege, we'll just move on to the</p> <p>16 next question.</p> <p>17 A Okay.</p> <p>18 Q All right. So I want to direct</p> <p>19 your attention, if I could, please, to the bottom</p> <p>20 of Exhibit 58. You'll see it says Customer</p> <p>21 Information. Do you see?</p> <p>22 A Um-hmm.</p> <p>23 MS. WING: Yes?</p> <p>24 A Yes.</p> |
| <p style="text-align: right;">Page 62</p> <p>1 to three stars, correct?</p> <p>2 A Like two to four. I mean, they were --</p> <p>3 Q Out of how many stars?</p> <p>4 A Out of five. I'm sorry, yeah. And</p> <p>5 there were only I want to say six or seven at the</p> <p>6 time, so it's hard to draw any inference on anything</p> <p>7 with six or seven.</p> <p>8 Q So you couldn't really draw an</p> <p>9 inference about whether customers were making money</p> <p>10 from these reviews that you saw online, correct?</p> <p>11 A Correct.</p> <p>12 (Whereupon CFTC Exhibit No. 58 was</p> <p>13 marked for identification, MM.)</p> <p>14 Q All right. I want to hand you what</p> <p>15 I've marked as CFTC Exhibit 58. And I'm going</p> <p>16 to ask you when you're ready if you recognize this</p> <p>17 document, Mr. Donelson.</p> <p>18 A Yes.</p> <p>19 Q All right. So have you seen this document</p> <p>20 before?</p> <p>21 A Yes.</p> <p>22 Q Where did you see it, please.</p> <p>23 A I created it, along with --</p> <p>24 Q Sorry, keep going.</p> | <p style="text-align: right;">Page 64</p> <p>1 BY MR. BURDEN:</p> <p>2 Q So it says, "Schedule of company's</p> <p>3 12 largest customers in terms of sales thereto</p> <p>4 and a description of sales thereto over a period</p> <p>5 of 2 years." Did you write that?</p> <p>6 A Yes.</p> <p>7 Q And then if you look, it says date</p> <p>8 requested October 31, 2017 and then it says, "would</p> <p>9 like to know types of trading." Did you write all</p> <p>10 that stuff?</p> <p>11 A Yes.</p> <p>12 Q All right. So what does that mean?</p> <p>13 What's going on there, please.</p> <p>14 A That is more of a question of are</p> <p>15 they part of the program or are they part of --</p> <p>16 are they self-traders. For example, there are</p> <p>17 people that basically just used it as an entry</p> <p>18 vehicle and they traded on their own.</p> <p>19 Q Got it. So looking at this due</p> <p>20 diligence list, I will represent to you that the</p> <p>21 file name for this in your production is Final Due</p> <p>22 Diligence Checklist. I don't know if that helps you</p> <p>23 at all. But where on this due diligence checklist</p> <p>24 can I find a request for customer trading records,</p> |

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| <p style="text-align: right;">Page 65</p> <p>1 i.e., to confirm whether customers made money?</p> <p>2 A That would be sales series breakdown</p> <p>3 or similar report.</p> <p>4 Q All right. And that's the sixth item</p> <p>5 under Customer Information?</p> <p>6 A Yes.</p> <p>7 Q All right. Now, it says date requested</p> <p>8 November 6, 2017, right?</p> <p>9 A Um-hmm.</p> <p>10 Q Yes?</p> <p>11 A Yes.</p> <p>12 Q All right. And then it says right next</p> <p>13 to that uploaded, is that right?</p> <p>14 A Correct.</p> <p>15 Q What does that mean?</p> <p>16 A That they said that they put</p> <p>17 a file in Dropbox and that I pulled it down.</p> <p>18 It doesn't -- does not say that it's the correct</p> <p>19 file or the -- that it answers the question. It's</p> <p>20 just basically I'm keeping track of did they send</p> <p>21 me something or did they not send me something.</p> <p>22 Q Well, did they send you the thing</p> <p>23 you requested, which is by your interpretation of</p> <p>24 Exhibit 58 customer trading records?</p> | <p style="text-align: right;">Page 67</p> <p>1 Q All right. So what I want to get at here</p> <p>2 is --</p> <p>3 A Like the trading, you know, trading</p> <p>4 philosophy. Those things could be part of that.</p> <p>5 It could be if there's something about the way they</p> <p>6 do phone calls. It's meant to really deal with is</p> <p>7 there something I need to know about that, do they</p> <p>8 have the rights.</p> <p>9 Q Got it. So what I want to get</p> <p>10 at here is, you know, Long Leaf Trading, part</p> <p>11 of their business is offering recommendations to</p> <p>12 customers, correct?</p> <p>13 A Correct.</p> <p>14 Q In fact, that's probably the biggest</p> <p>15 part of their business, correct?</p> <p>16 A Correct.</p> <p>17 Q So if you're taking over that business,</p> <p>18 you've got to know how to do that, right?</p> <p>19 A Correct.</p> <p>20 Q And Long Leaf Trading does that</p> <p>21 a certain way. I think you described that your</p> <p>22 understanding from talking to Tim Evans is that</p> <p>23 they make these four-legged spread trades, is that</p> <p>24 right?</p> |
| <p style="text-align: right;">Page 66</p> <p>1 A No.</p> <p>2 Q Let's go, if we could, please, to this</p> <p>3 item Intellectual Property, and it's closer to the</p> <p>4 top of Exhibit 58. Do you see that?</p> <p>5 A Yes.</p> <p>6 Q So what's going on here? What's this</p> <p>7 little list?</p> <p>8 A It gets into when you're buying</p> <p>9 the business, you're also buying the intellectual</p> <p>10 property and making sure that we have -- that he has</p> <p>11 clear ownership of that intellectual property.</p> <p>12 Q All right. So I want to direct your</p> <p>13 attention --</p> <p>14 A Websites, trademarks.</p> <p>15 Q So I want to direct your attention,</p> <p>16 please, to the item under intellectual property that</p> <p>17 says description of important technical know-how.</p> <p>18 Did you write that?</p> <p>19 A Yes.</p> <p>20 Q What does that means?</p> <p>21 A It could mean a myriad of things.</p> <p>22 In this -- it's kind of a catchall to say is there</p> <p>23 something other than what we've listed on here that</p> <p>24 we need to know.</p> | <p style="text-align: right;">Page 68</p> <p>1 A Correct.</p> <p>2 Q So how is that knowledge and</p> <p>3 information going to be passed on to you in this</p> <p>4 acquisition? How are you going to learn Long Leaf</p> <p>5 Trading's secret sauce?</p> <p>6 A It will be -- that's part of what</p> <p>7 the transition services agreement is, is that</p> <p>8 after the fact he would -- you know, once you close</p> <p>9 the deal he stays on for a period of time to make</p> <p>10 me comfortable with how to develop the trade, how</p> <p>11 do they set the trade up, those type of things.</p> <p>12 Q Got it. So developing trades, setting</p> <p>13 them up, where can I find that on the due diligence</p> <p>14 list? And maybe it's not here.</p> <p>15 A Well, that's technical know-how.</p> <p>16 Q Got it.</p> <p>17 A That's the type of thing you would</p> <p>18 say, well, how do you -- two things. One is what</p> <p>19 know-how and that do I need to have to run the</p> <p>20 business and, two, how do you protect it and, three,</p> <p>21 where is it resident.</p> <p>22 Q So let's talk about that technical</p> <p>23 know-how. Where is it resident or where was it when</p> <p>24 you acquired Long Leaf Trading?</p> |

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1 A It was resident in the owner himself,
 2 Tim Evans.
 3 Q So is there any document where this
 4 technical know-how was written down for you?
 5 A No. There is no written documentation
 6 other than he had five books, ebooks that outline
 7 option trading strategies and everything else, you
 8 know, and does specifically talk about the iron
 9 condor and that trade. The know-how is knowing
 10 where to place it, when to place it. That's the
 11 secret sauce, not -- anybody can develop an iron
 12 condor. It's you put these two legs on, you put
 13 those two legs on and you've got an answer. But
 14 trading is always about putting it on at the right
 15 time at the right place.
 16 Q So the ebooks that you described,
 17 those were PDFs that Mr. Evans made available to
 18 the public, correct?
 19 A Correct.
 20 Q So that's not the secret sauce, is it?
 21 A No, it's basic education.
 22 Q Got it. So the secret sauce, the
 23 knowing how and when to place the trade, that
 24 was something that Mr. Evans was going to impart

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1 to you sort of person to person, is it fair to say?
 2 A Correct.
 3 Q And we'll get into that. So one
 4 more item on Exhibit 58. Let's look, if we could,
 5 please, at material contracts. We see there's a
 6 foreign IB agreement line item here. What's that,
 7 please.
 8 A That is with CMC Markets, where one
 9 of their clients they introduce to CMC Markets,
 10 which is a contract for difference dealer in London,
 11 and there's a specific agreement. They're not -- he
 12 was not involved with the trading. It was basically
 13 this firm in Jordan opened an account with this firm
 14 in London and he introduced the firm in Jordan to
 15 them so, therefore, he's getting a residual
 16 commission from it.
 17 Q Got it.
 18 A And there's a full agreement of it.
 19 Q And what's the name of that Jordanian
 20 firm, please.
 21 A It had multiple names. It's First
 22 Investment Corp. I'd have to check for sure what
 23 the name of it was.
 24 Q All right. Were there any other customers

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1 you're aware of that Mr. Evans or Long Leaf Trading
 2 introduced to CMC Markets?
 3 A There were no other clients.
 4 Q So this First Investment Corp, are
 5 they sort of prop traders or do they trade for or
 6 on behalf of many other clients?
 7 A They trade -- my understanding,
 8 because they left almost immediately after
 9 I bought the firm, was that they were funds.
 10 So they were actually trading on customers' behalf
 11 but not directly for a customer or like a fund.
 12 You own part of the fund.
 13 Q Got it. And did you get any commissions
 14 from this IB relationship between Long Leaf Trading
 15 and CMC Markets?
 16 A Maybe two months' worth.
 17 Q I'm sure I just asked this, but
 18 First Investment Corp, are they the only client
 19 that was introduced to CMC Markets by Long Leaf
 20 Trading?
 21 A Yes.
 22 Q I did ask you that. All right.
 23 MR. PATRICK: Roughly how much did you
 24 receive in commissions in those two months

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1 from CMC?
 2 THE WITNESS: I would say somewhere in
 3 the neighborhood of 50,000.
 4 BY MR. BURDEN:
 5 Q So where does that come in from?
 6 If we wanted to look at it in bank statements,
 7 where would it be?
 8 A It would be -- it's actually a wire
 9 from CMC Markets.
 10 Q Got it.
 11 A When MiFID II came in, they severed the
 12 relationship.
 13 Q Sorry. What was that bit?
 14 A When MiFID II came in, they severed
 15 the relationship. Our customer told me they
 16 didn't want to be part of that deal, so we got
 17 cut out of it.
 18 Q What's MiFID II?
 19 A I don't know what MiFID stands --
 20 it's the new rulings that came in in early 2018 in
 21 Europe related to outlining commissions and things
 22 like that.
 23 Q Got it.
 24 A I can't remember. It's minister

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| <p style="text-align: right;">Page 73</p> <p>1 of something, financial instruments derivatives 2 I think. 3 (Whereupon CFTC Exhibit No. 59 was 4 marked for identification, MM.) 5 Q All right. Mr. Donelson, I want to hand 6 you what I've marked as CFTC Exhibit 59. Do you 7 recognize this document? 8 A Yes. 9 Q Can you tell me what it is, please. 10 A It's a list of customers. 11 Q All right. And is this a document that 12 you received in connection with the acquisition? 13 A Yes. 14 Q And who did you receive it from? 15 A Dennis Hansmann. 16 Q All right. So what are we looking at 17 here? It's a little spreadsheet. We see Account, 18 Geography, Individual, IRA, LTD Commissions, Account 19 Type. Walk me through this quickly, if you would, 20 please. 21 A Well, the first one you see here is what 22 I was just describing to you. 23 Q The CMC contract -- 24 A CMC Markets, right.</p> | <p style="text-align: right;">Page 75</p> <p>1 A I think it relates to one of the 12 largest 2 customers. 3 Q Okay. 4 A The first question on the customer 5 information request. 6 Q Got it. So you're looking at Exhibit 58. 7 And in your due diligence list you requested sales 8 records for the 12 largest customers, correct? 9 A Um-hmm, correct. 10 Q All right. So Exhibit 59 is you getting 11 that, correct? 12 A Correct. 13 Q And so Exhibit 59 shows the commissions 14 that Long Leaf Trading received from the 12 largest 15 customers? 16 A Correct. 17 Q All right. And it looks like two 18 of those large customers, they trade on their 19 own. They don't use the Time Means Money program, 20 correct? 21 A Correct. 22 Q But the ones that are broker assisted, 23 they do use the Time Means Money program, correct? 24 A Correct.</p> |
| <p style="text-align: right;">Page 74</p> <p>1 Q -- for difference? 2 A And the others are just account 3 numbers and telling me whether they're, you know, 4 are they U.S. or international, kind of what the 5 life-to-date commissions are and kind of what type 6 of account are they, are they electronic. When 7 they say electronic, what they're talking about 8 is somebody who's trading directly -- 9 Q Got it. 10 A -- on their own. Broker assisted would 11 be what we would term in our program. 12 Q The Time Means Money program you mean? 13 A Correct. 14 Q So is this saying that Long Leaf 15 Trading, at least during Mr. Evans' tenure, received 16 \$264,299.28 in commissions from CMC? 17 A Correct. 18 Q So what are these other accounts that 19 are listed in Exhibit 59? 20 A Well, I know what the first one is, 21 is somebody who trades on their own. 22 Q Well, like why did you receive this? 23 Like this isn't all of Long Leaf Trading's accounts, 24 is it?</p> | <p style="text-align: right;">Page 76</p> <p>1 Q So it looks like one of these guys paid 2 75 grand in commissions, is that right? 3 A Um-hmm, yes. 4 Q Another one 72 grand, is that right? 5 A Yes. 6 (Whereupon CFTC Exhibit No. 60 was 7 marked for identification, MM.) 8 Q All right. Mr. Donelson, I want to 9 hand you what I've marked as CFTC Exhibit 60, and 10 I'll ask you if you've had a chance to -- or once 11 you've had a chance to review the document, if you 12 recognize it. 13 A Yes. 14 Q All right. Can you tell me what this 15 document is, please. 16 A This is a question I had of the -- what do 17 they charge, where do all the fees go, basically how 18 the revenues are being created. 19 Q So what I want to ask about here is this 20 business with Kingsview. Who is Kingsview? 21 A Kingsview is the one that they licensed 22 Time Means Money through, and Kingsview would then 23 provide dead leads as part of that. 24 Q So I get dead leads. I don't get</p> |

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1 licensed Time Means Money. Could you expound on
 2 that for me, please.
 3 A It predates me so I will tell you what
 4 I know, but I don't --
 5 Q Got it.
 6 A I was not part of the conversation,
 7 is that Kingsview basically came up with the concept
 8 of Time Means Money, and Mr. Evans licensed it
 9 from them. And the way the licensing was paid
 10 was through this dead lead process, that this was
 11 how they paid for the licensing of the name, the
 12 trademark. I think it's in one of the documents
 13 I provided you, was the actual original agreement
 14 between Kingsview and Long Leaf Trading.
 15 Q Did you continue to pay Kingsview during
 16 your tenure at Long Leaf Trading?
 17 A For a period of time until June of
 18 2018 when I severed the relationship and bought
 19 the trademark from them.
 20 Q So you severed the relationship by just
 21 buying the trademark, right?
 22 A Correct.
 23 MS. WING: Would now be a good time
 24 to take a break?

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1 MR. BURDEN: Yeah, sure, we can take
 2 a break. So, Ms. Wing, we have an economist
 3 contractor who would like to sit in to see
 4 testimony. His name is Matt Edelstein. He's
 5 not currently staff on this case. He might
 6 be in the future just because anybody might
 7 be, but he's not on the formal order of
 8 investigation. He just wants to see testimony.
 9 Do you object to him coming in and watching?
 10 He won't be asking questions.
 11 MS. WING: As long as he won't be asking
 12 questions.
 13 MR. BURDEN: He will not be asking
 14 questions.
 15 MS. WING: We're not prepared for
 16 an economist.
 17 MR. BURDEN: No, no, no. So off the
 18 record then, if we could, please.
 19 (Whereupon a recess was taken from
 20 10:40 a.m., to 11 a.m., after which
 21 the following proceedings were had:)
 22 MR. BURDEN: All right. We're back on
 23 the record. I want the record to reflect that
 24 neither I, nor any of the other CFTC personnel

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1 present had any substantive conversations with
 2 the witness or his counsel, isn't that right?
 3 THE WITNESS: Correct.
 4 MS. WING: Yes, so stipulated.
 5 BY MR. BURDEN:
 6 Q All right. I want to just go back to
 7 one thing before we move on to our next exhibit.
 8 Mr. Donelson, I think you talked about a complaint
 9 log that you received or reviewed in connection
 10 with the acquisition of Long Leaf Trading?
 11 A Yes.
 12 Q Would you tell me about that, please.
 13 A It basically laid out complaints by
 14 specific customers, the date they complained, any
 15 resolution of it. It was standard what you would
 16 do, what I continue to do.
 17 Q And who showed this to you?
 18 A That was provided by Mr. Hansmann, but
 19 obviously it was Mr. Evans.
 20 Q Mr. Evans who did what?
 21 A It was his complaint log.
 22 Q Got it. And when did you review the
 23 complaint log?
 24 A Soon after I received it. By mid November

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1 probably.
 2 Q Of 2017?
 3 A Um-hmm.
 4 Q Yes?
 5 A Yes, sorry. I'll get that down by the
 6 end of the day.
 7 Q You will. And how many complaints were
 8 on this complaint log?
 9 A I want to say seven or eight.
 10 Q And do you remember the names of any
 11 of the customers?
 12 A One was Patel, Harish Patel.
 13 Q What did Mr. Patel complain about on this
 14 log?
 15 A He was complaining about sales tactics
 16 and -- from Mr. Jeremy Ruth. I think he settled for
 17 some amount of money. I want to say around \$5,000.
 18 There was another one, Okey Oteh or something.
 19 It was like O-t-e-h O-t-e-y. I think he settled
 20 for a small amount of funds, complained also about
 21 Mr. Ruth.
 22 Q So the other complainants, do you remember
 23 any of their names on this log?
 24 A Those were two of the most recent ones.

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1 Q Do you remember any of the other names?
 2 A No, I do not.
 3 Q What did the other people on the log
 4 complain about?
 5 A I think it was very similar complaints
 6 about sales tactics or entering trades. I don't
 7 remember any of them being -- having any settlement
 8 filed with them.
 9 Q So you said these customers, the
 10 log reflects the customers complaining about sales
 11 tactics, is that correct?
 12 A Correct.
 13 Q So what does that mean, sales tactics?
 14 Like what do you remember about the log? What did
 15 it reflect about these sales tactics?
 16 A It was kind of nondescript. I don't
 17 have any personal knowledge of what the sales
 18 tactics were, so all I have is what the log said.
 19 Q What did the log say?
 20 A I couldn't repeat it verbatim.
 21 It was generally that there were aggressive sales
 22 tactics. That was kind of as far as what was put
 23 onto the document itself.
 24 Q Did the log accuse Long Leaf Trading

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1 sales personnel of misrepresentations?
 2 A I don't remember that it did, but
 3 I would have to review the document. You have
 4 the document that was provided with the information
 5 I requested.
 6 Q Were you allowed to keep this complaint
 7 log?
 8 A Yes.
 9 Q Was it in the documents that were
 10 produced to us? I didn't see it and I looked pretty
 11 carefully, but I've been known to miss things.
 12 A If it wasn't, it should have been and
 13 I do have it.
 14 Q Okay. Me and Ms. Wing can talk offline
 15 about it.
 16 A I thought we provided it.
 17 Q Yeah, you very well could have. Did you
 18 talk to Mr. Evans about the complaint log?
 19 A Yes, I did.
 20 Q And what did you say to Mr. Evans about
 21 that complaint log?
 22 A One thing I noticed was that Mr. Ruth
 23 was on there multiple times, and he had told me
 24 that he had just let him go.

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1 Q All right. And were all of the complaints
 2 about Mr. Ruth?
 3 A I don't think they were. Some of them
 4 might have even predated him being there.
 5 Q All right.
 6 A It's a cumulative list of everything.
 7 Q What else did you say to Mr. Evans about
 8 the complaint log?
 9 A Just how he handled those two that he
 10 settled, you know, why did you settle, what is it --
 11 you know, how do you go about doing those things.
 12 Q What did Mr. Evans tell you in response?
 13 A Well, he said that, you know, he was the
 14 chief compliance officer so he would investigate all
 15 the -- if a customer called him with a complaint,
 16 he would investigate what went on and he would make
 17 a determination of is there some fault there, is
 18 there something. But typically it's -- everything
 19 would -- the way he represented it, by the letter
 20 of the law, no, there's nothing there. But the
 21 fact is is there can be kind of a nuisance aspect
 22 of this that says, look, it's easier to just settle
 23 it sometimes than to draw it out forever.
 24 Q Did Mr. Evans tell you that there was

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1 a nuisance aspect to these complaints?
 2 A I don't think he used that word,
 3 no. I think that was me interjecting a word.
 4 He basically explained, you know, at some point
 5 if they're going to go, you know, what's the least-
 6 cost action you can take because they could take
 7 it to court, they could take it to the NFA and then
 8 you start running up legal bills. And at some point
 9 what is it that you're settling for versus what
 10 could it cost. Just a simple business decision.
 11 Q The customers on the trading log,
 12 did they complain about losses in their accounts?
 13 A On which trading log?
 14 Q The complaint log, sorry. Let me
 15 rephrase that. Did the complaint log reflect
 16 customer complaints about losses in their accounts?
 17 A The one for Mr. Patel did, but he
 18 was confusing two different accounts. I remember
 19 that specifically. He had a Gain account where he
 20 was trading forex and he had a Long Leaf Trading
 21 account and he was losing money in his forex
 22 account, which they had nothing to do with.
 23 Q What about the other complaints on
 24 the log, did they mention trading losses at all?

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| <p style="text-align: right;">Page 85</p> <p>1 A They might have. I don't really remember 2 exactly what they said. 3 (Whereupon CFTC Exhibit No. 61 was 4 marked for identification, MM.) 5 Q All right. So this might be easier. 6 Mr. Donelson, I want to hand you what I've marked 7 as CFTC Exhibit 61. 8 MS. WING: So I don't think we need 9 a talk afterwards? 10 MR. BURDEN: You know, this was not 11 produced -- this document, if you could see 12 from the date, was not produced in connection 13 with like the acquisition-related production, 14 but it might just be the same thing and that 15 would obviate the need to talk about it. 16 Q So, Mr. Donelson, do you recognize CFTC 17 Exhibit 61? 18 A Yes, I do. 19 Q Can you tell me what it is, please. 20 A It is the complaint log. 21 Q And is this the same complaint log that 22 was provided to you by Mr. Evans in late 2017 in 23 connection with the Long Leaf Trading acquisition? 24 A Yes.</p> | <p style="text-align: right;">Page 87</p> <p>1 in which the Corporation operates and is capable of 2 evaluating the merits and risks of the transactions 3 contemplated by this Agreement and is able to bear 4 the substantial economic risk of such investment 5 for an indefinite period of time. Purchaser has 6 been afforded full access to the books and records, 7 facilities and personnel of the Corporation for 8 purposes of conducting a due diligence investigation 9 and has conducted a full due diligence investigation 10 of the Corporation." Did I read that correctly? 11 A Yes. 12 Q All right. And so you signed 13 this agreement that we see in Exhibit 62, right? 14 A Correct. 15 Q So Article 3.10, is all that right? 16 Is all that true? 17 MS. WING: I'm going to object because 18 I believe it calls for a legal conclusion. 19 BY MR. BURDEN: 20 Q All right. Answer the question, please, 21 Mr. Donelson. 22 A I don't know what the question is. 23 Q Well, did you do all of the things 24 in Article 3.10? Are you knowledgeable about the</p> |
| <p style="text-align: right;">Page 86</p> <p>1 (Whereupon CFTC Exhibit No. 62 was 2 marked for identification, MM.) 3 Q Mr. Donelson, you can put that one aside, 4 if you would, please, and I want to hand you what 5 I've marked as CFTC Exhibit 62. 6 A Okay. 7 Q Do you recognize this document? 8 A Yes, I do. 9 Q Can you tell me what it is, please. 10 A It is the stock purchase agreement of the 11 firm. 12 Q And this is the final and executed 13 agreements, is that correct? 14 A Let me check. Yes. 15 Q All right. So I want you to take 16 a look, if you would, please, at Article 3.10 17 titled Access and Investigation. It's on page 10. 18 Are you with me? 19 A Yes. 20 Q All right. So it says here, 21 "Purchaser acknowledges that it is relying on 22 its own independent investigation and analysis in 23 entering into the transaction contemplated hereby. 24 Purchaser is knowledgeable about the industries</p> | <p style="text-align: right;">Page 88</p> <p>1 industries in which Long Leaf Trading operates? 2 A Yes. 3 Q Were you afforded full access to the 4 books and records, facilities and personnel of Long 5 Leaf Trading? 6 A For this purpose, yes. 7 Q What do you mean, for this purpose? 8 A I acknowledge that I did. 9 Q Well, is that true? Is the thing that 10 you acknowledged correct? 11 A There are also representations about 12 what's being made in here that have impact on this 13 statement, so there's representations made by them. 14 There are also warranties and representations that 15 they make. 16 Q Got it. But what I'm asking -- 17 A For this purpose, this is basically 18 saying I can't go back to them and say you didn't 19 tell me about this or you didn't represent something 20 about this. This is not saying that it's done. 21 I'm confused as to what the statement is. 22 Q Well, paragraph 3.10 or Article 3.10 23 says -- it represents that the purchaser, which 24 is you, has been afforded full access to the books</p> |

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1 and records, facilities and personnel of Long Leaf
 2 Trading for purposes of conducting a due diligence
 3 investigation and has conducted a full due diligence
 4 investigation of the corporation, which is Long Leaf
 5 Trading. That's what 3.10 says, right?
 6 A Right.
 7 Q Is that correct? Did that happen?
 8 A In my estimate, yes. That's why
 9 I signed it. So the remainder of that says
 10 purchaser acknowledges and agrees that the seller's
 11 only making the representation and warranties
 12 contained in Article II of this agreement, and
 13 they are expressly made. So if they made a
 14 representation in this document, that plays into
 15 this.
 16 Q It says here, "Purchaser
 17 acknowledges and agrees that Seller is only
 18 making the representations and warranties contained
 19 in Article II of this Agreement," is that right?
 20 A Correct.
 21 Q And it goes further and says you are
 22 not relying on any other representations. Is that
 23 a fair summary of the rest of 3.10?
 24 A Correct.

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1 Q Are there any representations in
 2 Exhibit 62, in the stock purchase agreement by the
 3 seller about the profitability of customer trading,
 4 whether customers make or lose money?
 5 A They don't make that express
 6 representation, no.
 7 Q Do they make any implicit representations
 8 to that effect in your mind?
 9 A The first two would be implicit.
 10 Q Where is that?
 11 A 2.7.1 and 2.7.2.
 12 Q And what does 2.7.1 say?
 13 A "Any material adverse change in the
 14 business, financial condition, operations, or assets
 15 or liabilities of the Corporation."
 16 Q And what about 2.7.2?
 17 A "Any damage, destruction, loss, or
 18 claim or threatened claim or lien (whether covered
 19 by insurance or not) materially adversely affecting
 20 the properties or business of the Corporation or
 21 any of Seller's licenses."
 22 Q And it's your testimony that you understood
 23 2.7.1 and 2.7.2 to warrant that customer trading was
 24 profitable at Long Leaf?

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1 A No.
 2 Q So why did you tell me that? Why is that
 3 important, 2.7.1 and 2.7.2?
 4 A It would have to do with if there were
 5 claims after the fact.
 6 Q Got it. So 2.7.1 and 2.7.2 in your
 7 mind warrant that there were no outstanding claims
 8 by customers, is that correct?
 9 A Correct.
 10 Q Do they warrant to you that customer
 11 trading at Long Leaf is profitable?
 12 A No.
 13 Q All right. I want to turn again, if we
 14 could, please, to 3.10 where we were before. And in
 15 the first sentence of 3.10, Access and Investigation
 16 it says, "Purchaser acknowledges that it is relying
 17 on its own independent investigation and analysis in
 18 entering into the transaction contemplated hereby."
 19 What independent investigation
 20 and analysis did you conduct with respect to whether
 21 Long Leaf Trading's clients made or lost money?
 22 A I think I've already testified to what
 23 I looked at.
 24 Q Tell me again, if you would, please.

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1 A We asked for the top clients. We
 2 asked for -- I mean, I asked for how long they
 3 had been with the firm. I had done some analysis
 4 of any complaints, the complaint log and also the
 5 external complaints.
 6 Q And by that you mean online reviews,
 7 correct?
 8 A Right.
 9 Q What else?
 10 A I don't know what else.
 11 Q Was there anything else?
 12 A Not that I know of.
 13 Q Did you ever see any customer profit
 14 or loss statements?
 15 A No, I did not.
 16 MR. BURDEN: Have you got any questions
 17 about the acquisition or shall we proceed?
 18 MR. PATRICK: Proceed.
 19 BY MR. BURDEN:
 20 Q All right. So, Mr. Donelson, I think
 21 you testified before that you purchased Long Leaf
 22 Trading in December of '17, is that right?
 23 A Correct.
 24 MR. BURDEN: Let the record reflect

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| <p style="text-align: right;">Page 93</p> <p>1 that we're being joined by Mr. Edelstein here 2 with the very gracious permission of Ms. Wing 3 and Mr. Donelson. Mr. Edelstein is a contractor 4 for the CFTC. 5 Q So when did you take over at Long Leaf 6 Trading, Mr. Donelson? 7 A I fully took over at the end of 8 January. That's what the transition services 9 agreement -- Mr. Evans and I worked together to 10 transition the business for the first two months. 11 Obviously I bought the business on December 1st. 12 So, therefore, I was in charge of it but a lot of 13 things I still had to learn about the specifics of 14 what was going on. 15 Q All right. So December 1, 2019 you sort 16 of started -- 17 A 2017. 18 Q Sorry. So -- 19 MS. STREIT: 2018? 20 THE WITNESS: 2017. 21 BY MR. BURDEN: 22 Q So December of 2017 you started at 23 Long Leaf Trading in what capacity, Mr. Donelson? 24 A As the CEO.</p> | <p style="text-align: right;">Page 95</p> <p>1 accounts that are being traded under this Time Means 2 Money program, correct? 3 A At the time, yes. 4 Q So if 70 to 80 percent of the active 5 accounts were Time Means Money accounts, then 30 6 to 20 percent of the accounts were self-directed, 7 correct? 8 A Self-directed, correct. 9 Q And those figures are active accounts 10 when you started, right? 11 A Yeah, I would -- 12 Q So how did that -- 13 A I don't know the exact number, but that's 14 a good guess. 15 Q Got it. So how did that change over 16 time? Did it change over time is what I really 17 should ask. 18 A We don't -- we never went after 19 self-directed traders. I don't know how Mr. Evans 20 got the ones that he had, but effectively that was 21 not something we actually tried to bring on. So 22 for the most part the number of active self-traders 23 stayed about the same. There were about five or six 24 people that traded actively, and there were a whole</p> |
| <p style="text-align: right;">Page 94</p> <p>1 Q But Mr. Evans at that point was still 2 at Long Leaf, correct? 3 A Correct. 4 Q Sort of showing you the ropes, correct? 5 A Correct. 6 Q And he transitioned out by February 7 of 2018, is that right? 8 A Correct. 9 Q Leaving you sort of alone to manage 10 the company, correct? 11 A Correct. 12 Q All right. 13 A And I would talk to him off and on after 14 that, but it wasn't a day-to-day thing. 15 Q Got it. What percentage of Long Leaf 16 Trading's customers when you started were broker- 17 directed customers? 18 A It's a hard question because there's 19 a difference between -- there's a whole bunch of 20 inactive accounts that I'm not sure what they were 21 for, but I would say probably 70 to 80 percent were 22 broker assisted. 23 Q So the broker assisted -- just so we're 24 on the same page, all broker-assisted accounts are</p> | <p style="text-align: right;">Page 96</p> <p>1 bunch of people that had accounts that told us they 2 were going to do something but never did anything. 3 And then the self-trading, you know, people we were 4 bringing on were in the broker-assisted program. 5 Q So it sounds like from December of 6 2017 really through the present, 70 to 80 percent of 7 Long Leaf's customers are in this Time Means Money 8 program, is that right? 9 A No. To the present we have no 10 self-directed traders. So we became a guaranteed 11 IB. We had relationships with both Gain and 12 Cunningham. We gave up the Gain relationship and 13 went to Cunningham. 14 MS. WING: And I don't think you 15 heard his question. He said -- repeat 16 about the Time Means Money. They're not -- 17 currently are you trading Time Means Money? 18 THE WITNESS: No. 19 BY MR. BURDEN: 20 Q All right. What I want to get at is it 21 sounds like over time the broker-assisted traders 22 constituted sort of a larger portion of Long Leaf's 23 customer base, is that right? 24 A Correct.</p> |

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| <p style="text-align: right;">Page 97</p> <p>1 Q To a point where it was really</p> <p>2 100 percent because there were no more self-directed</p> <p>3 traders after that move to Cunningham, is that</p> <p>4 right?</p> <p>5 A No, after the move when we became</p> <p>6 a guaranteed introducing broker. We moved to</p> <p>7 Cunningham -- we moved the broker-assisted program</p> <p>8 to Cunningham in August of 2018 but kept all the</p> <p>9 self-trading at Gain. And when we became</p> <p>10 guaranteed, then we just removed -- we walked away</p> <p>11 from the business at Gain.</p> <p>12 Q And I should know this off the top of</p> <p>13 my head, but I don't. When did Long Leaf become</p> <p>14 a guaranteed broker, please.</p> <p>15 A In March of 2019.</p> <p>16 Q So between December of 2017 when</p> <p>17 you started and March of 2019 the percentage of</p> <p>18 broker-assisted customers at Long Leaf increased,</p> <p>19 is that correct?</p> <p>20 A Yes.</p> <p>21 Q From 70 to 80 percent when you started</p> <p>22 to what percent in March of 2019?</p> <p>23 A Probably like 85 percent.</p> <p>24 Q And then after March of 2019 it was</p> | <p style="text-align: right;">Page 99</p> <p>1 time decay, making profits off time decay were</p> <p>2 similar. However, the trade itself was completely</p> <p>3 different.</p> <p>4 Q Now, is it fair to say that the Time</p> <p>5 Means Money logo and trademark continued to appear</p> <p>6 in Long Leaf Trading promotional materials after</p> <p>7 February of 2018?</p> <p>8 A It probably did, yeah. We've removed</p> <p>9 most of it from our website now. We don't really</p> <p>10 have it out there at all.</p> <p>11 Q Why?</p> <p>12 A It's not a good -- it doesn't have</p> <p>13 any economic value from a business perspective.</p> <p>14 If it was some trademark that made people say,</p> <p>15 oh, yeah, that's something. It doesn't really have</p> <p>16 any business value in the way I think about it.</p> <p>17 Q Got it. So during your tenure at</p> <p>18 Long Leaf Trading -- which continues through this</p> <p>19 day, correct?</p> <p>20 A Correct.</p> <p>21 Q -- who are your customers? Are they</p> <p>22 persons in retirement? Are they young persons? Is</p> <p>23 it possible for you to generalize?</p> <p>24 A They tend to be people in retirement</p> |
| <p style="text-align: right;">Page 98</p> <p>1 100 percent broker assisted, right?</p> <p>2 A Correct.</p> <p>3 Q All right. And during the period</p> <p>4 of December of 2017 through March of 2019, broker-</p> <p>5 assisted customers were customers who traded in this</p> <p>6 Time Means Money program, is that correct?</p> <p>7 A We effectively stopped using the</p> <p>8 Time Means Money program in February, probably</p> <p>9 February 1st of 2018.</p> <p>10 Q All right. And what was it replaced with?</p> <p>11 A It was replaced with a program of option</p> <p>12 trading but not -- not the short condors, not those</p> <p>13 type of trades. They were much more a variant of</p> <p>14 trades to really reflect market conditions. Scott</p> <p>15 Gecas, who was my chief market strategist, has a</p> <p>16 wealth of knowledge about option trading and things</p> <p>17 like that. So we developed newer, different trades</p> <p>18 but they're very well known within the industry.</p> <p>19 They're nothing completely esoteric.</p> <p>20 Q So was there a name for this new trading</p> <p>21 program? So no more Time Means Money. What's the</p> <p>22 new thing?</p> <p>23 A We really didn't give it a new name.</p> <p>24 A lot of the concepts of the Time Means Money,</p> | <p style="text-align: right;">Page 100</p> <p>1 or very close to retirement. We have changed</p> <p>2 a lot of our acceptance criteria from where it</p> <p>3 was prior to Mr. Evans -- you know, when Mr. Evans</p> <p>4 owned it to mine. We state we don't want your</p> <p>5 entire investment portfolio. We don't want it.</p> <p>6 This is only appropriate for 10 to 20 percent at</p> <p>7 best and that this is an alternate to what you're</p> <p>8 trading. So we are looking for really more high</p> <p>9 net worth people that can really take on the</p> <p>10 risk of this type of trade. The issue we've had</p> <p>11 with some of the complaints we've had after from</p> <p>12 clients that were brought in, they gave them their</p> <p>13 entire savings. I think that's just completely</p> <p>14 inappropriate. This is not what that should be</p> <p>15 used for.</p> <p>16 Q So when did you impose this restriction</p> <p>17 that customers can only --</p> <p>18 A That was very earlier on. That was</p> <p>19 before we even got out of Time Means Money, is that</p> <p>20 we were looking for clients that this is a portion</p> <p>21 of their portfolio, not their entire portfolio.</p> <p>22 Q We've got to be careful not to talk over</p> <p>23 each other.</p> <p>24 A I'm sorry.</p> |

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1 Q Remember, if you would, please.
 2 Thanks. All right. During your tenure at Long
 3 Leaf Trading, what percentage of the firm's accounts
 4 were people's IRAs, either the entire IRA or part
 5 of an IRA?

6 A Maybe 30 percent, 40 percent of
 7 the clients. I am not a big believer of using
 8 the IRA. Just you lose some of the tax advantages
 9 of the trade.

10 Q I think you testified that Long Leaf
 11 Trading's customers were primarily people at or
 12 close to retirement, is that fair?

13 A Yes.

14 Q Was this a group that Long Leaf Trading
 15 sort of -- targeted sounds bad, but sold to more
 16 than other groups?

17 A I think it also has just something to do
 18 with the lead set that we had. My understanding,
 19 and this is before my time also, was that these were
 20 people who had signed up for an options education
 21 program. So it isn't -- we really don't have
 22 demographics on the names of the people in our
 23 firm or in our lead list. We have a phone number.
 24 We have their email address. We do not have age or

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1 anything like that. So it's more self-fulfilling
 2 in the sense of if that's the group of people that
 3 had signed up on these websites, then guess what,
 4 this is the group of people we're going to be
 5 targeting. We are working on a different marketing
 6 obviously than this lead set because it's an old
 7 lead set.

8 Q And did you use this lead set throughout
 9 your tenure at Long Leaf?

10 A Yes.

11 Q And this lead set was primarily
 12 comprised of people who were retired or near
 13 retirement, is that right?

14 A That's what it would appear to be,
 15 given when we contact people, that tends to be the
 16 demographic of the people we contact.

17 Q And I think you testified that you have
 18 tried to sort of pitch to high net worth customers,
 19 is that right?

20 A Um-hmm.

21 Q Yes?

22 A Yes.

23 Q When did that start, please.

24 A Pretty early on.

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1 Q When was that?

2 A Probably March-April we talked about
 3 how we could look for those people that are high
 4 net worth that have some knowledge of the markets.
 5 You're looking for a knowledgeable investor.

6 Q And that's March or April of '18, correct?

7 A Of '18, yes.

8 Q And how did you implement that?

9 A It was really in kind of what they
 10 were -- you know, one of the things we do in
 11 our demo or in our -- is get some idea what their
 12 portfolio is, you know, is this -- this is all they
 13 have or is this, you know, a part of a whole bunch
 14 of investments. So it helps us with that and then
 15 basically work on those probably more diligently
 16 than other leads.

17 Q So you didn't do anything in particular
 18 to sort of pitch to high net worth people. You just
 19 maybe focused more on the high net worth individuals
 20 that were in your existing lead set, correct?

21 A Correct.

22 Q And you continued -- Long Leaf Trading
 23 continued to pitch to not high net worth individuals
 24 as well, correct?

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1 A We wouldn't know the difference until we
 2 actually talked to them.

3 Q But for the people that turned out not
 4 to be high net worth individuals --

5 A You would still pitch to them, yes.

6 Q So what's high net worth to you?
 7 I mean, can you generalize about the, you know,
 8 the level of income or savings of your average
 9 client?

10 A Our largest client's worth 5 to \$6 million.

11 Q How about the average client, though?

12 A The average client, probably half
 13 a million.

14 Q Is it fair to characterize Long Leaf
 15 Trading's clients as retail clients?

16 A Yes.

17 Q Did most Long Leaf Trading customers
 18 have -- or I should ask what percentage of Long Leaf
 19 Trading's customers had prior investment experience?

20 A Say close to 100 percent.

21 Q What percentage of Long Leaf Trading's
 22 clients had experience trading options?

23 A Probably more in the realm of 60 to
 24 70 percent. Most of them had some option trading

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| <p style="text-align: right;">Page 105</p> <p>1 experience.</p> <p>2 MS. WING: And just for the record,</p> <p>3 I'll put on an objection for speculation</p> <p>4 on the percentages.</p> <p>5 MR. BURDEN: Yeah. I mean, we understand</p> <p>6 that Mr. Donelson is estimating.</p> <p>7 Q So I want to switch gears and talk</p> <p>8 about, if I could, please, Long Leaf Trading's</p> <p>9 recommendations to customers while you were in</p> <p>10 charge at Long Leaf. I want to ask some general</p> <p>11 questions, and then we'll look at some specific</p> <p>12 recommendations and you can help us to understand</p> <p>13 what they say.</p> <p>14 A Okay.</p> <p>15 Q So I think you testified that when you</p> <p>16 took over at Long Leaf, Long Leaf was recommending</p> <p>17 a certain kind of trade to customers, is that right?</p> <p>18 A Correct.</p> <p>19 Q What kind of trade is that?</p> <p>20 A It is a short iron condor.</p> <p>21 Q Is it fair to characterize that as</p> <p>22 a credit spread?</p> <p>23 A Correct.</p> <p>24 Q All right. Did you continue when</p> | <p style="text-align: right;">Page 107</p> <p>1 A Yes.</p> <p>2 Q And is it fair to characterize</p> <p>3 all of these spreads as out-of-the-money spreads?</p> <p>4 A Yes.</p> <p>5 Q So why --</p> <p>6 A Well --</p> <p>7 Q I'm sorry.</p> <p>8 A No, there are some that are -- step</p> <p>9 back here. I'm confused as to what you mean by</p> <p>10 out-of-the-money or in-the-money spreads because</p> <p>11 there are a couple trades that we make that are</p> <p>12 traded in the money. They're traded in the money</p> <p>13 on two options but two are out of the -- in other</p> <p>14 words, if it has to move past -- I'm just confused</p> <p>15 as to when you say in the money, out of the money.</p> <p>16 It's not as simple as that I guess is what I'm</p> <p>17 trying to say.</p> <p>18 FURTHER EXAMINATION</p> <p>19 BY MR. PATRICK:</p> <p>20 Q Do most of your spreads that you</p> <p>21 put on as a position, as a trade recommendation,</p> <p>22 do they involve at least one leg of an option that's</p> <p>23 out of the money?</p> <p>24 A Yes.</p> |
| <p style="text-align: right;">Page 106</p> <p>1 you were head of Long Leaf Trading to recommend</p> <p>2 credit spreads to customers?</p> <p>3 A We only did it once.</p> <p>4 Q And when was that, please.</p> <p>5 A In January.</p> <p>6 Q Of?</p> <p>7 A Of 2018.</p> <p>8 Q So really your first trade that</p> <p>9 you recommended to customers at Long Leaf was</p> <p>10 a credit spread and then after that no more credit</p> <p>11 spreads, correct?</p> <p>12 A Correct.</p> <p>13 Q All right. So what did you change to from</p> <p>14 these credit spreads?</p> <p>15 A We would do a series of trades.</p> <p>16 We would do broken wing butterflies. We would</p> <p>17 do volatility swaps. Sometimes we would just do</p> <p>18 a long condor, but the key was we went to a debit</p> <p>19 versus a credit spread. All of our trades going</p> <p>20 forward were debits, not credits.</p> <p>21 Q And I feel like you just testified</p> <p>22 to this, so forgive me for asking it again. But</p> <p>23 were all of the trades that you recommended at Long</p> <p>24 Leaf Trading spread trades?</p> | <p style="text-align: right;">Page 108</p> <p>1 Q How far out of the money typically are</p> <p>2 you looking for strikes?</p> <p>3 A Usually a standard deviation</p> <p>4 depending on how the trade is made. If we're</p> <p>5 selling an option, we look to be one standard</p> <p>6 deviation. Buying, we may be inside -- we'll</p> <p>7 usually be inside of that.</p> <p>8 Q Okay. Can you quantify that in terms</p> <p>9 of number of strikes typically --</p> <p>10 A Tends to be four strikes. Almost</p> <p>11 all of our trades that would be four strikes,</p> <p>12 they tend to be nondirectional in nature. So</p> <p>13 think of a strangle and then selling a strangle</p> <p>14 or even if they're a broken wing butterfly,</p> <p>15 there's a bias towards a direction but it's not</p> <p>16 required to make money on the trade.</p> <p>17 Q Typically what is your directional</p> <p>18 bias, at least during the period subsequent to</p> <p>19 January of 2018 when you said that was pretty much</p> <p>20 the last time that you had done a Time Means Money</p> <p>21 or a credit spread?</p> <p>22 A The only time we would take on any</p> <p>23 type of bias, a lot of times we would trade corn</p> <p>24 and soybeans against each other going into a WASDE</p> |

| | |
|--|---|
| <p style="text-align: right;">Page 109</p> <p>1 report or whatever the name of that thing is. 2 So they tend to move together either up or down. 3 So one's going to win, one's going to lose, but 4 you're going to win on one and you're going to 5 lose and one and you can make enough to cover 6 both spreads. So we tend never to put on a pure 7 directional spread. 8 There are a few trades that we 9 did which were -- we would always clarify to our 10 customers that they were kind of outside the normal 11 program. These are just opportunistic trades. If 12 you want to take them, great. If you don't, don't. 13 Things like a gold call spread. 14 Q Is that how you refer to them, 15 opportunistic trades in the materials that you 16 sent to customers, the recommendation emails 17 that -- 18 A I think we would always refer to them 19 as an opportunistic trade. 20 FURTHER EXAMINATION 21 BY MR. BURDEN: 22 Q So the opportunistic trades 23 are directionally biased, is that correct? 24 A Yes.</p> | <p style="text-align: right;">Page 111</p> <p>1 either. They're somewhere in between. 2 Q What's a deep out-of-the-money option 3 to you? 4 A If I sold something that was, say, 5 two or three standard deviations from the current 6 price, that's deep out of the money and you wouldn't 7 collect much for it either. 8 Q Got it. So you testified before 9 that the spread trades you recommended were 10 primarily nondirectional and those were program 11 trades? 12 A Correct. 13 Q And then there's these opportunistic 14 trades which are directional but less frequent, 15 correct? 16 A I think we did five of them all 17 through 2018. 18 Q So not a whole lot of the opportunistic 19 trades? 20 A Right. 21 Q All right. So let's talk about 22 the programmatic trades. And I feel like I know the 23 answer to this now, but for the programmatic trades 24 how many legs did they typically have?</p> |
| <p style="text-align: right;">Page 110</p> <p>1 Q And the rest of your trades are designed 2 to be nondirectional, correct? 3 A Correct. 4 Q And is it fair to say that most 5 of the trade recommendations that you made were 6 nondirectional? 7 A Yes. 8 Q So I want to return, if I could, 9 please, you testified that in the spread trades 10 options you sold were typically four strikes away 11 from the market, is that right? 12 A No. 13 Q Correct it for me, if you would, please. 14 And I know I got it wrong. 15 A They tend to be one standard 16 deviation, which could be two strikes, it could 17 be five strikes depending on the volatility of the 18 actual option. 19 Q Would you characterize your spread 20 trades you recommended as involving the sale of 21 deep out-of-the-money options or close to the money? 22 Can you generalize at all? 23 A I wouldn't call them deep out-of-the- 24 money options. They weren't close to the money</p> | <p style="text-align: right;">Page 112</p> <p>1 A They would typically have four legs. 2 Q And how many of these four-legged 3 trades were recommended to customers on a monthly 4 basis? 5 A Typically at a minimum four. Sometimes 6 more than that if one of the trades came off early 7 as profitable. 8 Q So while you were at Long Leaf Trading 9 customers were for the most part getting -- doing 10 16 trades a month, is that right? 11 A Four trades a month with four legs. 12 Q But that's like 16 -- 13 A Options, yes. 14 Q So, you know, let me ask you this. 15 Why spread trading? Why not just -- I understand 16 why you wouldn't want to sell an option, but why 17 not just buy an option for a customer? Why always 18 do these spreads? 19 A Well, even a simple directional spread, 20 if you're buying the option, you're paying for a 21 lot of time and volatility you don't need to pay 22 for. So if you sell an option and create a simple 23 vertical spread, you're getting into the option 24 at a lower price. And as it moves -- what you're</p> |

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1 giving up is that home run, massive move that has
 2 less than half a percent chance of ever happening.
 3 So you're not really giving up anything, but
 4 you're being able to make money on a simple vertical
 5 spread. A spread trade just reduces your cost
 6 of entry really.

7 Q Because you're collecting premiums and
 8 then applying that to the cost of purchasing the
 9 option?

10 A Correct.

11 Q But as you said before, you know,
 12 you're giving up the home run. My question is why
 13 give up the home run?

14 A How often does the home run happen?

15 Q I should ask you that question. How often
 16 does the home run happen?

17 A Very rarely. There's a reason why it's
 18 five to six sigmas away -- or standard deviations
 19 away from the mean, is that the likelihood of it
 20 happening is very low. And you're paying for it --
 21 you're paying quite a bit for it even though the
 22 chances of it happening are pretty low.

23 Q So it sounds like with your program
 24 trades the fundamental philosophy is to purchase

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1 an option and then to subsidize that option with
 2 premiums from the sale of an option, another option,
 3 is that right?

4 A Correct.

5 Q So it sounds like what you're saying is
 6 you're giving up your not particularly likely home
 7 run, but you are getting into the trade at a lower
 8 price because of the premiums you're collecting,
 9 is that accurate?

10 A Correct.

11 Q So how can you tell if that tradeoff
 12 is worth it? Do you have any calculations, any
 13 studies? You know, you're giving up the home run.
 14 You're getting into the trade at less money.
 15 Sometimes the trades win, right?

16 A Um-hmm.

17 Q Yes?

18 A Yes.

19 Q And sometimes they lose, right?

20 A Correct.

21 Q So how do you -- how can you tell, how do
 22 you ascertain in making these recommendations that
 23 that tradeoff is justified?

24 A We use a tool called QuikStrike.

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1 It's right off the CME website. And we can run
 2 simulation on option spreads, things like that.
 3 They could look at what's the probability of these
 4 things happening. The other thing that we do
 5 with some of the trades because we're trading --
 6 I don't -- so we would trade -- we would buy, for
 7 example, the end-of-month strangle but we would
 8 sell a weekly strangle.

9 So there's a time period when we
 10 collect the premium, and say that those two options
 11 that we sold are out of the money. Now we just
 12 have a long strangle on, which basically is the
 13 home run component of it also. So there are time
 14 periods when we're not -- we're not short anything.
 15 We're long everything. And the basis of that trade
 16 is usually that there's volatility difference
 17 between the weeks and the months.

18 Q So that brings me to my next question,
 19 you know, and I'm going to betray my ignorance on
 20 options here. But is it fair to characterize the
 21 program trades as bets on volatility?

22 A No.

23 Q How would you characterize them? What
 24 are you speculating --

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1 A All options are some bet on volatility.
 2 So I won't -- the element that we're using is
 3 volatility and time. Time is the most predictable
 4 of all of the elements of an option. I know exactly
 5 how it's going to work. It's going to work the
 6 same for every single option. And to the extent
 7 that we can structure the trade that time works in
 8 our favor, we get an edge. So when you sell a
 9 weekly and buy a monthly, effectively you've got
 10 time working on your behalf because I'm selling
 11 something that takes 7 days, for example, to decay
 12 versus something I'm buying that takes 30 days to
 13 decay.

14 Q So I understand, but my question to
 15 you is -- well, I should start from the beginning.
 16 So the spread trades that you recommend to clients,
 17 those are speculative trades, correct?

18 A Correct.

19 Q What are they speculating on?

20 A They're speculating on the time
 21 element of what we're doing, which is not as
 22 much speculation, and that the volatility stays
 23 at or around where we place the back -- the long
 24 position at.

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1 Q I'm going to betray my ignorance
 2 again and ask are all of the program trades bets
 3 that the underlying commodity will be more volatile
 4 or less volatile? Like do you make money if it's
 5 more volatile or do you make money if it's less
 6 volatile?
 7 A You will always make more money
 8 if it's more volatile, but that's not to say that
 9 the trade is based on that.
 10 Q So if the trade is -- if the market
 11 is less volatile for a particular trade or if it's
 12 not volatile at all, will a customer make money
 13 then?
 14 A Most likely not.
 15 Q So really the program trades are
 16 speculation that over time the market will be more
 17 volatile rather than less, is that fair to say?
 18 A No.
 19 Q How would you say it?
 20 A That it will not go down in volatility.
 21 Q So when you say that the program
 22 trades are sort of bets that the commodity won't
 23 go down in volatility, down from where? Like what's
 24 the benchmark?

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1 A Well, the benchmark is when you
 2 place the trade, right? So when I place a trade,
 3 there is a volatility on that option at that time.
 4 We then compare, especially the long position, to
 5 kind of what is the historical volatility. So, for
 6 example, if I'm buying gold and it's at 40 percent,
 7 well, the historical's closer to 10. I wouldn't
 8 want to make that trade because when I buy it and
 9 it goes back to 10, the price of that thing's going
 10 to go like that (indicating), right? It's going to
 11 go straight down. So that's what we're comparing
 12 it to, is historic volatilities and QuikStrike has
 13 all that historical data in it.
 14 Q So that the program trades are
 15 essentially bets that the market will be more
 16 volatile than it has historically been, is it fair
 17 to say?
 18 A No.
 19 Q How would you say it?
 20 A That it will regress to the
 21 historical volatility. That's what our kind
 22 of underlying bet is, that the back, no matter
 23 what I buy -- whatever my long position is will
 24 not go significantly below historic volatilities.

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1 Q Okay. I apologize if I asked you
 2 this in the first 20 minutes, but before joining
 3 Long Leaf did you ever trade option spreads?
 4 A Yes.
 5 Q Was that for your own account?
 6 A Yes.
 7 Q And was that trading profitable?
 8 A No.
 9 Q How much did you lose?
 10 A About 5,000.
 11 Q Okay. So all that trading you did before
 12 was option spreads, except your hedge?
 13 A Yeah, I think so. I'd have to look back
 14 at it.
 15 MR. PATRICK: But some of that trading
 16 was on equity options, correct?
 17 THE WITNESS: Correct.
 18 BY MR. BURDEN:
 19 Q All right. Long Leaf Trading, did you
 20 have an account at Long Leaf Trading?
 21 A No, I did not.
 22 Q Did you trade according to the
 23 recommendations that Long Leaf Trading provided
 24 to customers?

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1 A Before or -- I'm confused as to
 2 what time period you're talking about. We had no
 3 proprietary account.
 4 Q Yeah. So during the time where
 5 you were CEO of Long Leaf Trading, did you trade
 6 yourself according to the recommendations provided
 7 to customers?
 8 A No.
 9 Q Did you have any family members with
 10 accounts at Long Leaf Trading?
 11 A No, I did not.
 12 Q Did you give them Long Leaf Trading's
 13 trade recommendations?
 14 A No.
 15 Q Same questions for friends.
 16 A No.
 17 Q How come?
 18 A Until I was sure that it could make money.
 19 Q When were you sure that it could make
 20 money?
 21 A Right now I feel very comfortable with
 22 my clients' money consistently. We made clients
 23 money in 2018 but not consistently. We would lose
 24 one month, make one month.

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| <p style="text-align: right;">Page 121</p> <p>1 Q So overall in 2018 did clients -- and 2 we'll come back to this -- did clients make money 3 or did they lose money? 4 A They lost money. 5 Q So your testimony is that you didn't 6 trade according to Long Leaf's recommendations 7 personally because you weren't sure it could make 8 money, correct? 9 A No. I didn't trade it because I don't 10 think it's right for me to be trading the exact same 11 thing as my customers. I don't want any perception 12 that I'm frontrunning or doing anything like that. 13 I don't let my traders do it. I don't let myself 14 do it. 15 Q But surely there are ways to prevent -- 16 you wouldn't front-run your customers, would you? 17 A No. 18 Q So why would you not put your own 19 skin in the game? Why would you not make the same 20 bet your customers are making? 21 A It's just my philosophy. I don't -- 22 Q It was because you weren't confident the 23 trading recommendations could make money, correct? 24 MS. WING: I'm going to object.</p> | <p style="text-align: right;">Page 123</p> <p>1 you didn't put any money -- 2 A I didn't, though. I did not take the 3 trades -- I did not trade the trades that we were 4 recommending to our customers. 5 Q And your testimony is that's because you 6 didn't want to front-run your customers? 7 A I don't want even the perception that 8 that's happening. 9 Q But how would customers ever perceive 10 that? Do you tell customers what you're trading? 11 A Of course. I don't tell them my personal 12 investment, no. 13 Q So how are they going to think you're 14 frontrunning? Why would that perception be there? 15 A Well, it would be in the compliance 16 side of the world. It's not whether my customers 17 would know it. It's, you know, if somebody comes 18 in and looks at your -- I'd just prefer that that 19 whole process be purely separate. I don't want -- 20 if I'm going to have a proprietary account at my 21 firm, it's going to be doing tests. It's not 22 going to be doing live trading. 23 Q Did you have a proprietary account at 24 Long Leaf Trading?</p> |
| <p style="text-align: right;">Page 122</p> <p>1 He answered the question. 2 MR. BURDEN: You're not going to object, 3 Ms. Wing. 4 MS. WING: I am going to object on the 5 record. 6 MR. BURDEN: You're allowed to object 7 for Fifth Amendment and for attorney-client 8 privilege. There are no evidentiary rules 9 here. It will not be before a court except 10 for impeachment purposes. Would you read my 11 question back, please, Mary. 12 (Whereupon the portion of the record 13 was read as requested.) 14 A That's not why. I think the trades 15 we're making right now are very profitable, but 16 I still don't make my own -- trade on my own account 17 that way. 18 Q Yeah, but I'm asking about prior to today 19 for the entire I think -- 20 A I would put -- 21 Q -- three years. 22 A -- money on every one of those trades. 23 Did they all work, no. 24 Q Wait. But I thought you testified</p> | <p style="text-align: right;">Page 124</p> <p>1 A There was one that was open, but we 2 never funded it because we could simulate most 3 of what we saw in QuikStrike and didn't see any real 4 reason to use that to test trades. 5 MR. BURDEN: All right. You know, 6 it's noon and this is a good place for me 7 to stop. Do you guys want to take a lunch 8 break? 9 MS. WING: Yes. 10 MR. BURDEN: Okay. Let's go off the 11 record, please. 12 (Whereupon a lunch recess was taken 13 from 12 p.m., to 1:06 p.m., after 14 which the following proceedings were 15 had:) 16 17 18 19 20 21 22 23 24</p> |

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AFTERNOON SESSION

MR. BURDEN: Let the record reflect that neither myself nor any other representative of the CFTC had any substantive discussions with counsel or the witness during the break. Isn't that right, Counsel and the witness?

MS. WING: We so stipulate.

JAMES DONELSON,
called as a witness herein, having been previously sworn and examined, testified further as follows:

FURTHER EXAMINATION (Cont'd.)

BY MR. BURDEN:

Q All right. Mr. Donelson, I want to follow up on a couple of points from our last session before I start showing you trade recommendations and we walk through them, and that's what's coming up next.

A All right.

Q All right. So I think you testified before that during your tenure at Long Leaf, you limited or tried to limit customers' investments in Long Leaf Trading's programs to 10 to 20 percent of their portfolio, is that right?

A Right. That's -- we're working on that,

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but we're still working through that.

Q All right. So how did you ensure that customers didn't invest more than 20 percent of their portfolio?

A Part of the process is that the broker creates a KYC of how much is their investments, what's their portfolio, those type of things, so that we know from that kind of what is their overall net worth and everything else. And then I have -- my assistant basically runs them through an application. The brokers never use the application, and it's actually done through DocuSign now.

Q And when did that process start, please.

A Well, that started when we went to Cunningham. Gain's was actually electronic on their platform.

Q Did you limit customers to 10 to 20 percent of their accounts or if they wanted to invest more, would you let them?

A We would let them if they wanted to, but most don't push the envelope that much.

Q So was that 10 to 20 percent limit something that you instructed brokers to tell clients?

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A Yes.

Q And when did that start?

A That started I would say October or November of 2018.

Q Before October-November of 2018, were there any limits like that? I guess limit's not the right word, but before --

A They're more guidelines.

Q So before October-November of 2018, were clients at Long Leaf told by your brokers, you know, don't invest more than 20 percent?

A They were told not to invest everything. That was what they were told, that this isn't a you put everything into it type investment. The guidelines have just kind of worked as we've looked at clients, the ones that really can be successful and ones who can't.

Q So that 10 to 20 percent limit that brokers advised clients, that came around October-November of 2018, right?

A Right.

Q We were talking before about Kingsview and, you know, this is not -- you had suggested that you stopped using the Time Means Money like signage,

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is that right?

A Yeah.

Q Pretty early on in your tenure, correct?

A Correct.

Q And I think you testified too that you wound up paying Kingsview for that Time Means Money trademark, right?

A Basically just closing out the agreement as a final purchase of the trademark and everything involved with it, yes.

Q I'm not doubting your representation that the trademark was not particularly valuable, but those two things kind of seem to be at odds. Can you reconcile them for me?

A The way the agreement was set up is we would have continued to pay them and pay them and pay them forever under any leads that were received from them for this. This was just kind of a one-time payment to cut off any future payments that we'd make to them.

Q So it sounds like this payment wasn't really for the Time Means Money license or trademark. It was just to stop making future payments, right?

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| <p style="text-align: right;">Page 129</p> <p>1 A Right.</p> <p>2 Q Because they were getting --</p> <p>3 A It was --</p> <p>4 Q -- futures residuals from these leads?</p> <p>5 A Yeah, and I -- that agreement predated</p> <p>6 me and some of the conversation isn't really on</p> <p>7 there. It's hard for me to explain how it works</p> <p>8 because I'm not really sure exactly how it works.</p> <p>9 But effectively it was kind of their licensing</p> <p>10 payment to Kingsview for the Time Means Money,</p> <p>11 but this is the way it was being calculated.</p> <p>12 FURTHER EXAMINATION</p> <p>13 BY MR. PATRICK:</p> <p>14 Q After you made that final payment to</p> <p>15 Kingsview and sort of closed out that arrangement,</p> <p>16 did you continue to receive leads from Kingsview?</p> <p>17 A No.</p> <p>18 Q Did you continue to use Kingsview's</p> <p>19 old leads?</p> <p>20 A Yeah, we were allowed to use the</p> <p>21 leads that had already been provided to us, yes.</p> <p>22 Q Okay. But then you were no longer</p> <p>23 receiving the Kingsview leads --</p> <p>24 A I have not received any new leads</p> | <p style="text-align: right;">Page 131</p> <p>1 would actually put them in a -- there were two --</p> <p>2 like a broker would have two different accounts.</p> <p>3 I'm not sure that's the right word but like two</p> <p>4 different broker codes. One would be clients that</p> <p>5 weren't through the program, one that were through</p> <p>6 the program that -- not were through the program</p> <p>7 but were leads provided to us by Kingsview. Those</p> <p>8 then would have based on the instructions that were</p> <p>9 given to Gain, would have this amount taken out</p> <p>10 for each trade and then that would be remitted</p> <p>11 to Kingsview.</p> <p>12 Q Interesting. So the payments to Kingsview</p> <p>13 were actually made by Gain?</p> <p>14 A Correct.</p> <p>15 Q Did you provide those instructions to Gain?</p> <p>16 A We -- most of the people had already</p> <p>17 been set up by the time I got there. I don't think</p> <p>18 I set up any -- I don't know if I ever set up a new</p> <p>19 sales rep.</p> <p>20 Q When you got there at Long Leaf, this was</p> <p>21 already happening, right?</p> <p>22 A Yeah, this was already -- this is -- we</p> <p>23 just continued the way it was being done before.</p> <p>24 Q So presumably Tim Evans or somebody</p> |
| <p style="text-align: right;">Page 130</p> <p>1 since June of last year, 2018.</p> <p>2 FURTHER EXAMINATION</p> <p>3 BY MR. BURDEN:</p> <p>4 Q So I'm confused about a point here.</p> <p>5 Was Long Leaf Trading paying Kingsview for the</p> <p>6 license of the Time Means Money trademark or for</p> <p>7 these leads?</p> <p>8 A I think it is for the trademark.</p> <p>9 Q Why do you think that?</p> <p>10 A That's the way the agreement read to</p> <p>11 me when -- I think it's actually in one of the</p> <p>12 documents that are in what I provided to you on</p> <p>13 the acquisition because we got a copy of that,</p> <p>14 that it's the way the licensing agreement was paid</p> <p>15 for. That was my understanding.</p> <p>16 Q Got it. And so the basis for the</p> <p>17 payments to Kingsview, when would they get paid?</p> <p>18 Is it like when a customer invests? Is it every</p> <p>19 time you use the -- and I understand you didn't</p> <p>20 after a certain period -- but the Time Means</p> <p>21 Money method? Like how are payments being sent</p> <p>22 to Kingsview?</p> <p>23 A They were being -- actually, so if</p> <p>24 the client lead turned into a customer, then we</p> | <p style="text-align: right;">Page 132</p> <p>1 else who preceded you had given these instructions</p> <p>2 to Gain?</p> <p>3 A Instructions, correct.</p> <p>4 Q All right. I want to talk a little</p> <p>5 bit more about spread trades as well. So it</p> <p>6 sounds like the idea behind your program trades</p> <p>7 at Long Leaf is to sell options to sort of finance</p> <p>8 the purchase of options that are closer to the</p> <p>9 money, is that fair to say?</p> <p>10 A Correct.</p> <p>11 Q So did you ever research and see if</p> <p>12 there was a cheaper way to do this to effect the</p> <p>13 same trade?</p> <p>14 A I'm not sure what -- I'm not sure what</p> <p>15 you mean.</p> <p>16 Q So what I'm getting at here is did</p> <p>17 you ever offer customers the options to -- or do you</p> <p>18 ever recommend that customers enter into VIX options</p> <p>19 rather than do these four-legged spread trades?</p> <p>20 A VIX is options specifically to the stock</p> <p>21 market, not --</p> <p>22 Q No. I mean, there were options --</p> <p>23 or I should ask you. Are you aware of VIX option</p> <p>24 products on the CME Group's exchanges?</p> |

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1 A Yes.

2 Q So what VIX options products are you

3 aware of that are on the CME exchanges?

4 A Predominantly the only one that I'm aware

5 of is the one for the S&P 500.

6 Q So were you aware that there are many,

7 many other VIX option products traded on the CME

8 Group exchanges?

9 A No, I was not aware of multiples.

10 Q Is that something that you looked

11 into at all, whether there were VIX options

12 available to speculate on volatility in commodity

13 futures?

14 A But we're not speculating on volatility.

15 Q Well, whatever you're doing. Did you look

16 into recommending ---

17 A No, we did not look into VIX options.

18 Q Why not?

19 A The trades that we're looking at

20 have adequate volume and volatility and are

21 the product that we're actually trading. So you

22 can use the economics of the product also.

23 Q Well, it sounds like you weren't

24 aware of VIX options that were available on the

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1 CME Group exchanges, is that fair to say?

2 A Yes.

3 Q And for a VIX option there would be only

4 one commission to a customer, is that correct?

5 A If you only bought one.

6 FURTHER EXAMINATION

7 BY MR. PATRICK:

8 Q So did you ever look at alternatives

9 to the types of options contracts that you were

10 offering to your customers that might provide them

11 exposure to the same sort of whether it's volatility

12 or something else in the market that would be

13 similar to the types of investments that you were

14 offering your customers just to see if there was

15 an option out there that might serve your customers

16 better or have a better overall --

17 A We did look at multiple things

18 in terms of we tend to trade, say, the Canadian

19 dollar versus the actual oil contracts. They're

20 highly correlated so we use correlations. We have

21 looked at could you use a future and an option

22 to synthesize something that would be just as

23 efficient. So we have looked at different trading

24 styles. To say one's better than the other,

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1 I mean --

2 Q So you said something there. I think

3 you mentioned efficient? Did you use that as one of

4 the terms that you described the types of investment

5 options that might be out there as --

6 A Yeah.

7 Q -- some being more efficient or

8 less efficient? Can you tell us what you mean

9 by efficient?

10 A Efficient usually in my parlance

11 would mean that it's highly tied to the underlying

12 product that -- it's going to be an efficient --

13 it comes from the word efficient hedge, right?

14 So if I'm hedging oil, I should buy an oil future.

15 I shouldn't buy a Canadian dollar future. However,

16 if you're trading options, it may be simpler to

17 trade at a lower cost Canadian dollar versus that

18 because they're highly correlated.

19 Q So were there alternatives that you

20 explored with your customers? I know you mentioned

21 the Canadian dollar trade. Were there other options

22 that you explored with your customers or trades that

23 you may have put on?

24 A We have to look at a couple different

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1 aspects. One is is there enough volume in that

2 trade to be able to execute the trade. Also, does

3 it have weeklies, does it have monthlies. There's

4 a lot of different things that we have to look at

5 when we make trades. That's why we tend to trade

6 things that have monthly and weekly options, not

7 just monthly, and we manage how much -- we really

8 focus on how much margin is it going to take to

9 get into that trade. We have a calculator that

10 tells us, hey, this trade's going to take this

11 much margin, that much margin because we're looking

12 at what's the expected return to the margin that

13 you're really risking, not dollars but margin risk

14 to say is it really worth making \$20 on something

15 that you're risking a thousand.

16 Q Do you have certain guidelines that

17 you want to stay within, parameters with regard to

18 that particular --

19 A I usually look at like 20 to 25 percent

20 is kind of a bare minimum of how much margin are

21 you putting on versus what your expected return

22 would look like. The expected return can be based

23 on a couple different things. One is in some cases

24 when you do the trade, when the shorts come off

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| <p style="text-align: right;">Page 137</p> <p>1 if everything stayed exactly the same, you would 2 actually make money on the trade. Sometimes it's, 3 well, it's going to need a little movement up or 4 down to make it profitable. 5 Q So just so I understand, one of 6 the considerations that you make when you are 7 considering a trade is that the return has to be 8 at least 20 percent of -- 9 A The expected -- 10 Q -- the margin? 11 A Yeah. I mean, the expected return 12 has to be about 20 percent of margin is what we 13 look for. 14 (Whereupon CFTC Exhibit No. 63 was 15 marked for identification, MM.) 16 FURTHER EXAMINATION 17 BY MR. BURDEN: 18 Q Mr. Donelson, I'm going to hand you 19 what I've marked as CFTC Exhibit 63. If you could 20 just take a moment to look it over, please, I will 21 ask if you recognize it. 22 A Yes. 23 Q All right. What do you recognize 24 Exhibit 63 to be, please.</p> | <p style="text-align: right;">Page 139</p> <p>1 Q All right. So how does the amount that 2 the individual has in his or her account correlate 3 to how many contracts are recommended? 4 A Usually it has to do with how much 5 margin you're putting on as a percentage of their 6 total balance. 7 Q But what's the rule? 8 A At this time, because they're using short 9 condors, it was something like 20 to 25 percent of 10 their balance in margin. So, in other words, you're 11 only trading really about a quarter of their total 12 amount. 13 Q Got it. So if you look here, it says -- 14 there's a column that's second from the right that 15 says Reward/Risk. What does that indicate, please. 16 A That would be your maximum profit and 17 your maximum loss. 18 Q And how is that determined? 19 A That would be by -- so this is a short 20 iron condor. So what would happen is if all these 21 things closed out of the money, you're basically 22 collecting 434.92 to start with -- 23 Q Got it. 24 A -- and you get to keep it all, right?</p> |
| <p style="text-align: right;">Page 138</p> <p>1 A It is a trade recommendation. 2 Q Who came up with this trade recommendation? 3 A This one would have been Mr. Evans. 4 Q All right. And you see it was sent -- 5 it looks like Craig Pace sent it to you and then 6 you sent it to Mr. Evans. So what's going on here? 7 As you can see, this is early in your tenure, 8 December 26th of 2017. 9 A I'm not sure why it's in that 10 chain other than to say it's his approval. So 11 Mr. Nations approved it, Greg sent it to me and 12 I sent it to Tim. 13 Q So let's look at the second 14 page of Exhibit 63, if we could, please. And 15 I want to look at -- there's a Recommendation 1, 16 a Recommendation 2 and then some columns, and I 17 want to ask you about these. So it says, "We are 18 recommending a total of five contracts for each 19 recommended position below." 20 Do you know what the basis was 21 for recommending five contracts as opposed to some 22 other number? 23 A That would be how much the individual 24 had in their account.</p> | <p style="text-align: right;">Page 140</p> <p>1 On the other hand, if it went through and say 2 it went to 1260 in gold, then you would lose a 3 thousand dollars but you collected 434.92, plus 4 your fees and everything else. That's how that's 5 calculated. 6 Q All right. So it looks like the most 7 you can win here is \$434, right? 8 A Right. 9 Q And the most you could lose is \$565, right? 10 A Correct. 11 Q And that's somewhat determinative, isn't 12 it? That's bracketed by the spread? 13 A Bracketed by the spread, correct. 14 Q Now, I notice here that there is -- 15 it doesn't look like there's any -- I'll tell you 16 what, how I should ask it is this. Mr. Donelson, 17 how did Long Leaf Trading secure customer consent 18 to exit this trade? 19 A They may not have to. 20 Q I didn't say they did. 21 A If they were meaning to buy something 22 back, they would send out a secondary recommendation 23 to exit the trade. But the way these are built, if 24 they're in the money, there is no exit. Everything</p> |

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| <p style="text-align: right;">Page 141</p> <p>1 just expires.</p> <p>2 Q Got it. And that, in fact, is the plan</p> <p>3 for the credit spreads, is that right?</p> <p>4 A That is always the plan of our credit</p> <p>5 spread.</p> <p>6 Q Was there ever an occasion -- and did</p> <p>7 you testify you guys only did one credit spread or</p> <p>8 just a few during your tenure?</p> <p>9 A We did one group, which would have been</p> <p>10 four credit spreads.</p> <p>11 Q So that's got to be Exhibit 63, right?</p> <p>12 This has got to be the only credit spread. If you</p> <p>13 look at Exhibit 63 as a group exhibit --</p> <p>14 A Yes.</p> <p>15 Q -- these two emails, they each have two</p> <p>16 recommendations in them or this is the --</p> <p>17 A Yeah.</p> <p>18 Q -- the set of credit spreads that happened</p> <p>19 on your watch, right?</p> <p>20 A Correct.</p> <p>21 Q And did all of these expire worthless?</p> <p>22 A No. They all -- yeah, they all expired</p> <p>23 in the money, actually.</p> <p>24 Q Got it. That's what I meant to say.</p> | <p style="text-align: right;">Page 143</p> <p>1 at here's all the options, here's what they're</p> <p>2 priced at, and then usually you would always add</p> <p>3 a little bit just from the standpoint of the time</p> <p>4 element of if I send it out and it comes back,</p> <p>5 is it really going to be there anymore or not.</p> <p>6 With these they tend to stay about the same price</p> <p>7 for a whole day.</p> <p>8 Q So you gave yourself some wiggle room and</p> <p>9 you checked the market --</p> <p>10 A Right.</p> <p>11 Q -- for liquidity?</p> <p>12 A Right. You check the market for liquidity</p> <p>13 and price.</p> <p>14 FURTHER EXAMINATION</p> <p>15 BY MR. PATRICK:</p> <p>16 Q So in this particular example if you were</p> <p>17 to add some wiggle room as it was described, is that</p> <p>18 adding to your or-better price or is it -- in this</p> <p>19 case is it adding to that price or pulling back?</p> <p>20 A Reducing the price.</p> <p>21 Q It would be reducing?</p> <p>22 A Right.</p> <p>23 Q Okay.</p> <p>24 A Basically saying, well, I think</p> |
| <p style="text-align: right;">Page 142</p> <p>1 MS. WING: I just take exception</p> <p>2 with on his watch because he wasn't a licensed</p> <p>3 Series 3 at this time. He was -- that was --</p> <p>4 MR. BURDEN: Do you have an objection?</p> <p>5 MS. WING: No. I'm just trying to</p> <p>6 clear -- I have an objection to your use of</p> <p>7 the word on his watch.</p> <p>8 BY MR. BURDEN:</p> <p>9 Q All right. Let's stay on Exhibit 63.</p> <p>10 Do you see there's an offer price and it says</p> <p>11 580 OB?</p> <p>12 A Or better.</p> <p>13 Q So that's what OB stands for?</p> <p>14 A Yes.</p> <p>15 Q So let me ask you this. How do you know</p> <p>16 when this recommendation gets sent out? And maybe</p> <p>17 you don't. Maybe it was Evans' recommendation.</p> <p>18 But if you do know, how do you know that you can</p> <p>19 get 580 or better?</p> <p>20 A Well, two ways. One is we had</p> <p>21 QuikStrike, which basically will calculate --</p> <p>22 you put all those pieces in. It's going to say</p> <p>23 here's what it is. Then also you have at the time</p> <p>24 Gain's trading platform. So we could easily look</p> | <p style="text-align: right;">Page 144</p> <p>1 I can really get in at 43, but I don't know if</p> <p>2 the market's going to move against me. So I'm going</p> <p>3 to go with 40, but I'm still going to execute at</p> <p>4 the best price in the market. I'm not going to</p> <p>5 go execute at 40 if I can get in at 42.</p> <p>6 Q And with a debit spread, that would be</p> <p>7 the opposite, of course?</p> <p>8 A The opposite, right.</p> <p>9 Q Okay.</p> <p>10 A But there was always the issue of timing.</p> <p>11 (Whereupon CFTC Exhibit No. 64 was</p> <p>12 marked for identification, MM.)</p> <p>13 FURTHER EXAMINATION</p> <p>14 BY MR. BURDEN:</p> <p>15 Q All right. Mr. Donelson, I want</p> <p>16 to hand you what I've marked as CFTC Exhibit 64.</p> <p>17 Mr. Donelson, do you recognize this document?</p> <p>18 A Yes.</p> <p>19 Q Can you tell me what it is, please.</p> <p>20 A It is a trade recommendation for British</p> <p>21 pound and for the U.S. Treasury bond.</p> <p>22 Q All right. And this was a recommendation</p> <p>23 that was sent out while you were CEO of Long Leaf</p> <p>24 Trading, is that right?</p> |

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| <p style="text-align: right;">Page 145</p> <p>1 A Correct.</p> <p>2 Q Who came up with this trade?</p> <p>3 A Actually, it was myself and Scott</p> <p>4 Gecas. Scott was our marketing and his experience</p> <p>5 in trading options, he had been on the floor. He</p> <p>6 had done a lot of options trading. This is the</p> <p>7 first set that we moved away from the credit</p> <p>8 spreads.</p> <p>9 Q Got it. So this is your first debit</p> <p>10 spread, is that right?</p> <p>11 A Correct.</p> <p>12 Q All right. So what I really want</p> <p>13 to know is how you came up with the trade, but</p> <p>14 let's just run through this real quick. So we've</p> <p>15 got a recommendation for a U.S. T-bond volatility</p> <p>16 swap, is that right?</p> <p>17 A Correct.</p> <p>18 Q And we've got buy, we've got sell, we've</p> <p>19 got max gain and loss. How is that, for the record,</p> <p>20 how is that calculated, please.</p> <p>21 A That's actually mathematical also.</p> <p>22 If you took what's the maximum you could get to,</p> <p>23 which is in this case -- let me look at the trade.</p> <p>24 Yeah, it would be effectively -- if the sells came</p> | <p style="text-align: right;">Page 147</p> <p>1 A Those are exit points that we're</p> <p>2 looking to take the trade off at this price or that</p> <p>3 price based on as you go through the trade and where</p> <p>4 that trade's going to effectively decay to, that we</p> <p>5 don't want to wait until the last -- I mean, this --</p> <p>6 to take the max loss means I'm going to sit there</p> <p>7 and do absolutely nothing and I can't do anything</p> <p>8 about it. The other is if we recognize it's a loss,</p> <p>9 we're going to get out of it as a loss.</p> <p>10 Q So that makes sense to me. Target gain, it</p> <p>11 seems to me that -- why do you have a target gain?</p> <p>12 Why isn't the target gain the max gain?</p> <p>13 A Depending on the trade, the max gain</p> <p>14 if you calculated it, it would have to be the</p> <p>15 perfect -- you know, you'd have to hit the perfect</p> <p>16 second of the perfect day of the perfect time at the</p> <p>17 perfect price. That would be the max. It's kind of</p> <p>18 the theoretical how much you would possibly make on</p> <p>19 the trade.</p> <p>20 Q Got it.</p> <p>21 A It's not realistic to say that's how</p> <p>22 much you're going to make on the trade.</p> <p>23 Q All right. So what then is the target</p> <p>24 gain?</p> |
| <p style="text-align: right;">Page 146</p> <p>1 off and you hit a certain level -- this is very</p> <p>2 hard. That's why we don't use this max gain</p> <p>3 anymore. The max gain is actually infinite on</p> <p>4 a volatility swap. You just can't -- because</p> <p>5 if you come off of the trade, the sell, and they</p> <p>6 both expire worthless and say the bond goes to</p> <p>7 190, well, you get all of that. But this is why</p> <p>8 we don't use max gain or loss anymore on these type</p> <p>9 of trades because it doesn't make sense. The loss</p> <p>10 is basically what you're getting into the trade at.</p> <p>11 Q Got it.</p> <p>12 MR. PATRICK: And that infinite gain</p> <p>13 is only because the expiration on the buys</p> <p>14 are --</p> <p>15 THE WITNESS: Different than the</p> <p>16 expirations on the sells.</p> <p>17 MR. PATRICK: And later, right, than the --</p> <p>18 THE WITNESS: Right. So, I mean --</p> <p>19 MR. PATRICK: -- than the expirations on</p> <p>20 the sells?</p> <p>21 THE WITNESS: Yeah.</p> <p>22 BY MR. BURDEN:</p> <p>23 Q So, Mr. Donelson, here we've got target</p> <p>24 gain and target max loss. What are these, please.</p> | <p style="text-align: right;">Page 148</p> <p>1 A The target gain is based on the expiration</p> <p>2 of the sells and what this spread should be worth</p> <p>3 with any type of movement.</p> <p>4 Q So how do you figure that out?</p> <p>5 A Given this was our first one, we looked</p> <p>6 at where would we expect it to move to based on what</p> <p>7 we're seeing in the volatility and everything else</p> <p>8 and that this should be moving fairly close to one</p> <p>9 of these wings by that time, how much would it then</p> <p>10 be worth, and that's how we came up with that</p> <p>11 number.</p> <p>12 Q But you don't know if the volatility's</p> <p>13 going to move in that direction, right?</p> <p>14 A Well, it's going to move in some</p> <p>15 direction. We're not looking at specific direction.</p> <p>16 We're looking at volatility will tell you it's going</p> <p>17 to move at least this much.</p> <p>18 Q Right.</p> <p>19 A Or has a high probability of moving that</p> <p>20 much.</p> <p>21 Q So I guess that leads to my next question.</p> <p>22 How do you assess the probability of realizing the</p> <p>23 target gain?</p> <p>24 A We're putting it out there more as</p> |

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1 a here's the first shot at this and then as we go
2 along, the updates we give them of here's where this
3 is looking to come out. The idea is to keep them
4 informed of what's going on in the trade because,
5 you know, the first shot at -- this is our first
6 try at this. This is very different than what
7 they've been seeing.

8 Q Yeah. So I understand they've changed,
9 and we'll look at later iterations too. But right
10 now --

11 A No. I'm just saying this is the first
12 trade that wasn't a short condor.

13 Q I understand. So with respect to
14 Exhibit 64, I'm still confused on how target
15 gain is arrived at. It sounds like your testimony
16 is this max gain is a theoretical number, right?

17 A Yeah.

18 Q It could theoretically happen, right?

19 A Yeah. Well, theoretically the max
20 gain on this type of trade is actually infinite.

21 Q Yeah. But while the long and the short
22 positions are on, that max gain is the most you
23 could conceivably make, right?

24 A Right.

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1 Q But that would not typically happen,
2 correct?

3 A No.

4 Q It would have to be I think you said the
5 perfect second of the perfect hour of the perfect
6 day, right?

7 A Yes, or it would have to go to some
8 astronomical number.

9 Q The target gain so presumably is in
10 your view more realistic, is that fair to say?

11 A It's an area of which when we see it,
12 we're going to take it off at that, that we don't
13 think that there's much upside beyond that point.

14 Q Got it. So where in Exhibit 64 can
15 a customer see the likelihood of achieving, you
16 know, the target gain, let's say?

17 A They really don't in this example.

18 Q So where on Exhibit 64 can the customer
19 see the likelihood of achieving the target loss?

20 A No place really.

21 Q Do you have a view at the time that
22 Exhibit 64 was created, do you have a way to tell
23 the likelihood of achieving the target gain?

24 A We do and this is -- like I said,

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1 this is the first time we did this. So we kind
2 of tried to improve it as we went along.

3 Q We can get to that stuff.

4 A The -- this would be a one-sigma move
5 is where -- or one standard deviation move in the
6 underlying -- in the buy side after the sell had
7 come off in a week is kind of how we built it up.

8 Q All right. So if you would, please --

9 A All other things being equal. That was
10 the other part.

11 Q Yeah. Assuming that I have no
12 background in statistics, which I don't, how
13 likely was it that a customer would achieve this
14 target gain? It sounds like you had assessed that
15 likelihood, correct?

16 A You know, the calculation would be in the
17 area of 35 to 50 percent.

18 Q Is that just for this recommendation,
19 Exhibit 64, or is that like across the board?

20 A It would be for this one. I would have
21 to look at the other ones to understand if that's
22 the exact same thing.

23 Q Well, I asked what's the likelihood
24 of achieving a target gain, and your testimony

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1 was 35 to 50 percent, right?

2 A Yeah, but that's not to say that there
3 isn't going to be a gain.

4 Q No, no, I understand. But what I mean
5 is --

6 A That's why we would update it during
7 the process.

8 Q Is that 35 to 50 percent, is that a
9 figure that you have and you're building the trades
10 around that?

11 A No.

12 Q So where does that number come from?

13 A That's the math behind it.

14 Q That it's 35 to 50 percent likely to
15 achieve the target gain?

16 A That it hit that target, yeah.

17 Q So is that figure generated by QuikStrike?
18 Who comes up with that?

19 A That was -- QuikStrike would be able to
20 tell you the math behind it, yeah.

21 Q But that 35 to 50 percent likelihood
22 of achieving a target gain, where does that number
23 come from? Like who gives it to you?

24 A So if you have a one-sigma likely move,

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1 that's about 35 percent. And we usually would
 2 move a little past that, which gets you -- it's a
 3 one-sided move of one standard deviation is about
 4 39 percent with a one standard deviation.
 5 Q So what's giving you the one standard
 6 deviation? Like where are you getting that from?
 7 A That's out of QuikStrike.
 8 Q Got it, okay.
 9 A They have it all laid out in the
 10 option pricing and everything else, like what is
 11 a one standard deviation move.
 12 Q So for all of the program trades you
 13 recommended, all of the debit spreads, does that
 14 35 to 50 percent likelihood of achieving the target
 15 gain hold?
 16 A Actually, we started bringing it down
 17 to -- bringing the target gain down, therefore,
 18 increasing the likelihood of it.
 19 Q And when did you start bringing that
 20 target gain number down?
 21 A I want to say in April.
 22 Q Of what year, please.
 23 A Of 2018.
 24 Q So after you started bringing the

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1 target gain down for your trade recommendations,
 2 what percentage likelihood of achieving that target
 3 gain were you looking at?
 4 A It was more in like the 60 to 70 percent
 5 likelihood we were getting to the target.
 6 Q And was that the case sort of through
 7 the present, that 60 to 70 percent likelihood?
 8 A Yeah, that's -- I would say that's
 9 accurate.
 10 Q All right. And so if there's a 35 to
 11 50 percent chance of achieving the target gain,
 12 what's the likelihood of achieving let's say the
 13 target loss?
 14 A It was probably more in the -- well,
 15 if you really want to think of it a different way,
 16 it would be -- there's a real high likelihood you
 17 can get the target loss, you know. I could take
 18 it off earlier. I could do a lot of things. But
 19 to say -- the target loss is really about once we
 20 see the trade moving south, we get out of the --
 21 you know, we're going to get out of the trade
 22 at that price.
 23 Q Got it.
 24 A And that's really more of a question

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1 of being able to discern that might have been the
 2 right trade when you put it on but now it's not.
 3 You need to get out.
 4 FURTHER EXAMINATION
 5 BY MR. PATRICK:
 6 Q Is the one-sigma move that you
 7 had described earlier when you were talking about
 8 the max gain, can you roughly apply that to all of
 9 the trades that you put on, the recommended trades?
 10 Was that one standard deviation move what you were
 11 kind of working with in terms of what the max profit
 12 would be?
 13 A Well, the max profit was always
 14 mathematical and theoretical, and rarely would we
 15 ever say we're ever going to hit the max because
 16 it's --
 17 Q I'm sorry. I misspoke. Target gain.
 18 A The target gain was usually that
 19 one-sigma move. And depending on whether it
 20 was nondirectional or more directional in nature
 21 it mattered, but for the most part that's what you
 22 were looking at.
 23 Q And how would the -- if it was
 24 a directional versus multidirectional, how would

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1 that make a difference in the standard deviation?
 2 A Well, nondirectional, it doesn't matter
 3 which direction it goes. So I open up a bigger --
 4 if I'm directional this way and, yeah, it moves one
 5 sigma but it -- one standard deviation but moves the
 6 wrong way, it's not good, right? And so some of the
 7 trades, even though there's a bias to them, you have
 8 to take that into account. The only time we would
 9 do that -- Scott's background was more technical
 10 trading. Mine's more economics, like here's a
 11 supply and demand of a certain industry. He would
 12 be the guy looking at, okay, here's -- it's hit
 13 the bottom twice. It's going to bounce off of this,
 14 the technical aspect. So that's when we would put
 15 something on with a little more directional bias,
 16 if he's seeing something like that. But Scott
 17 was doing a lot of the trade design at this time.
 18 It was all of the trade design, actually.
 19 FURTHER EXAMINATION
 20 BY MR. BURDEN:
 21 Q Sorry. Your testimony is that Mr. Gecas
 22 did all of the trade design?
 23 A Almost all of the trade design.
 24 I did most of the work on the back end of making

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1 sure the trade, yeah, it's going to cost this,
2 it's going to cost that. And then obviously he
3 and I would discuss what trade should we put on,
4 should we put this one on or that one.

5 Q So let's get into that a bit. Let me
6 just stay, if we could, please, on Exhibit 64. So
7 where in Exhibit 64 does it account for the effect
8 of fees and commissions?

9 A It's calculated in the gain and loss
10 numbers.

11 Q Got it.

12 A That includes all the fees, all the
13 commissions.

14 Q So let me ask -- I think you
15 testified before that there was a 35 to 50 percent
16 chance of achieving the target gain at least until
17 April of 2018, is that right?

18 A Yes.

19 Q And following April 2018 -- well, I should
20 just ask. Was that 35 to 50 percent likelihood
21 disclosed to customers?

22 A No.

23 Q Why not?

24 A This is a targeted gain. It's not the

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1 exit recommendation.

2 Q Well, do you think that a customer
3 would want to know what the likelihood of being
4 able to achieve not even the maximum gain but sort
5 of a more realistic targeted gain, do you think that
6 would be important to a customer?

7 A I think it would be. We talked through
8 this with a lot of our customers because they had
9 never seen these trades before.

10 Q Did you explain to any customers that
11 there was a 35 to 50 percent likelihood of achieving
12 the target gain?

13 A Yeah. The target gain was meant to be --
14 you know, once it got to that point we would take it
15 off. We aren't going to keep holding it and trying
16 to get there. We're going to come back if we don't
17 think it's going to get to that level, and that's
18 what the target gain meant. It wasn't -- it wasn't
19 the target that we would -- every trade would hit
20 that number.

21 Q So the piece that I'm concerned about is
22 this 35 to 50 percent likelihood. Did you ever tell
23 a client, hey, there's a 35 to 50 percent likelihood
24 of achieving the target gain?

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1 A Yes.

2 Q What clients did you tell?

3 A I'm trying to think who I talked to.
4 I'd have to remember who. I talked to a lot of
5 clients at that time. I'm just trying to think
6 of --

7 Q Just one.

8 A I've talked to a lot of clients.
9 It's just whether it was at this time or later on.

10 Q Well, I'll ask about the later period
11 later, you know, between December of 2017 and --

12 A I think Dennis Nations was one of the
13 people I talked to.

14 Q Your testimony is that you told Dennis
15 Nations that he had a 35 to 50 percent chance of
16 achieving the target gain?

17 A I think so, yes.

18 Q Any other customers?

19 A Jerry Krantz, because I've talked to -- I
20 talk to Jerry all the time. I'm trying to remember
21 which clients were there and which ones weren't. I
22 know I talked with -- I talked with Martin Pegelow,
23 but I think that was well after we had changed this
24 anyway.

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1 Q Yeah. So, once again, my question is
2 what customers did you tell, hey, you've got a 35
3 to 50 percent chance of achieving the target gain
4 and no more than that? And you said --

5 A I didn't say no more than that. I would
6 say statistically it's 35 to 50 percent chance.

7 Q All right. And you said that to Dennis
8 Nations, right?

9 A Yeah.

10 Q And you said that to Jerry Krantz, right?

11 A Um-hmm.

12 Q Yes?

13 A I believe so, yes.

14 Q And you said that to Martin Pegelow?

15 A I'm not sure because I'm not sure when I --

16 Q Got it.

17 A If we had already made the switch
18 over to a much lower -- a lower targeted number,
19 which would effectively mean a higher probability.

20 Q So what other customers did you disclose
21 this 35 to 50 percent likelihood to?

22 A I told most of my brokers. I don't
23 know which ones talked to anybody about it, but
24 the idea that it's -- the statistics would tell

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1 you 35 to 50 percent and that the target is,
2 look, this is kind of -- we're not going to carry it
3 past this point. That's what the target was meant
4 to mean.

5 Q I understand. So were there any other
6 customers other than Nations --

7 A That I personally talked to?

8 Q Yeah, yeah.

9 A I talked to tons and tons of
10 customers. I don't know that I ever talked to
11 them specifically about this.

12 Q But that is my question. Who did you tell
13 about this 35 to 50 percent likelihood?

14 A Well, like I said, I told the brokers.

15 Q What customers?

16 A I told you three. I'm trying to
17 think of which customers were there at that time
18 that I talked to.

19 Q If you're going to tell me I told
20 everybody or I told most people -- did you tell
21 most people? Is that something you shared or just
22 kind of those three?

23 A I told my brokers and I told those
24 three people, and I'm trying to think if I talked

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1 to anybody else at that time. It was over a year
2 ago.

3 Q Did you tell any other customers about
4 this 35 to 50 percent number, any other customers
5 other than Nations, Krantz or maybe Pegelow?

6 A I think Mark Hartman.

7 Q Anyone else?

8 A I'm trying to think who I talked to
9 versus who -- I know Scott was talking to people.

10 Q Just you. Let's just do you.

11 A That's what I'm saying is I didn't
12 have a lot of direct contact with customers at
13 that time. I just know those two I did talk to.
14 Jerry Krantz I talked to quite a few times, Dennis
15 Nations.

16 Q All right. Anyone else that you told
17 about this 35 to 50 percent likelihood?

18 MS. WING: If you recall.

19 A I can't recall any other name.

20 BY MR. BURDEN:

21 Q Did you tell other customers about
22 this 35 to 50 percent likelihood of achieving
23 the target gain but maybe you don't remember their
24 names?

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1 A It's possible.

2 Q What I'm asking you is --

3 A Because we changed it so soon
4 right after we started this, that we moved it
5 to a different strike, that it's hard for me to
6 go, well, did we talk to them at that time or kind
7 of here's where we're moving this to. We were
8 trying to be very transparent with them as we were
9 really moving from what Time Means Money was to
10 something that we saw as being much more in line
11 with the markets, in line with what you can make
12 profits on, so on and so forth.

13 So, you know, this was after
14 watching the first month of trading and then
15 looking back at the trading going this strategy
16 of doing short condors is not fit to the market
17 that we're in. We need to make some changes. So
18 we were doing some changes on the fly, and were we
19 as perfect at it as we'd hoped to be? No. But, on
20 the other hand, we put on a lot of trades that had
21 a higher likelihood of profitability because they
22 were fit to the market better.

23 Q So I want to return to this 35 to
24 50 percent number. I think your testimony was that

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1 you instructed the brokers to make this disclosure
2 to clients, is that correct?

3 A To explain what the targeted gain was.

4 Q Yeah. But the piece that I'm concerned
5 about, which you've got to know by now --

6 A Right.

7 Q -- is this 35 to 50 percent likelihood.

8 Did you tell your brokers, hey, make sure you tell
9 clients there's only a 35 to 50 percent likelihood
10 of achieving the target gain? Did you say that to
11 your brokers or email it to them?

12 A I talked to them.

13 Q What did you say to them?

14 A I said tell them that there's less
15 than a 50 percent chance of hitting the targeted
16 number.

17 Q What brokers did you make that statement
18 to?

19 A All the brokers that were there at that
20 time.

21 Q Do you recall their names?

22 A Scott Gecas, Andrew Nelson, Craig --

23 no, Craig Pace wasn't there I don't think. Connor
24 Campo. Those are the only ones that had accounts.

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1 Q Do you know if the brokers in fact
2 told customers there was a less than 50 percent
3 likelihood of --
4 A I cannot say that I know that they did.
5 Q Did you supervise them or listen in on
6 their calls at all?
7 A I listened in on some of their calls,
8 but we don't record all of our calls. If you dial
9 direct from our system, we don't have a recording.
10 Q That explains something I was going
11 to ask later. So how did you make sure that your
12 brokers advised clients of the less than 50 percent
13 likelihood of achieving the target gain?
14 A I mean, we walked through all these
15 trades with them before they sent them out. This
16 is just the documentation of it because at this
17 time, this was the first time we'd ever rolled
18 these type of trades out. All they'd ever seen
19 from Scott -- or not Scott, from Tim was some
20 type of short condor or something like that.
21 So we walked them through each
22 trade, told them exactly what they needed to say
23 when they sent out the trade so that they could
24 explain the trade to them. That's where we laid

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1 out this -- this is what the target gain is for.
2 It's not, hey, you're going to hit this number.
3 It's, you know, there's a likelihood -- there's
4 a less than 50 percent chance we'll hit there. But
5 it's really our stop of if it gets to that point,
6 we're going to get out of the trade at that price.
7 Q Got it. But how did you make sure that
8 your brokers said that to customers?
9 A I listened to them calling their customers
10 with the trade recommendations.
11 Q Okay. And you heard your brokers
12 telling customers there was a less than 50 percent
13 chance of achieving the target gain?
14 A I heard them saying -- was it perfect,
15 no. They were stumbling through some of it because
16 it's new to them, but they were talking about what
17 the targeted gain meant and what the targeted loss
18 meant.
19 Q You've got to know the only thing I care
20 about right now --
21 A Yeah.
22 Q -- is the less than 50 percent likelihood
23 stat. Did you hear the brokers --
24 A I did not.

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1 Q -- say that to clients?
2 A Not every time.
3 Q Did you discipline any brokers for that?
4 A No.
5 Q Did you write any of them up?
6 A No.
7 Q Did you fire them for that?
8 A No.
9 Q All right. Let's look at something
10 a little bit easier. Second page of Exhibit 64,
11 if you would, please. You'll see that under
12 Recommendation 1 it says Exit: 15 Or Better Good
13 until Cancel. Did I read that right?
14 A Um-hmm.
15 Q So what's that?
16 A That would -- no, that's not the
17 Recommendation 2. That's Recommendation 1.
18 Q So that exit 15 OB good until cancel
19 applies to Recommendation 1, correct?
20 A Right.
21 Q Let's do Recommendation 2 because it'll
22 be easier for the record and it's all on one page.
23 A Okay.
24 Q So do you see Recommendation 2 in

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1 Exhibit 64?
2 A Um-hmm.
3 Q Yes?
4 A Yes.
5 Q If you would, please. Thank you.
6 Do you see it says Order: Negative 75 OB Good until
7 Cancel, right?
8 A Yes.
9 Q And then it says Exit: 25 OB Good until
10 Cancel, right?
11 A Correct.
12 Q What's that exit 25 OB good until cancel
13 mean?
14 A That is actually the max loss.
15 We're working on the idea that if we could have
16 that order in place, should it crash really fast
17 we can get out of it.
18 Q So the idea is that the client
19 would consent to this trade sort of writ large
20 and if things sort of went really sideways, you
21 would consider that you had adequate authority to
22 exit at this max loss -- the price that would get
23 you the max loss?
24 A Yeah, right. Like I said, this is

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1 kind of the first time we were trying to figure
 2 out how to get approval at the time of the entrance
 3 or should we do it -- you know, it was -- some
 4 of this was brand new to us and how do we -- before,
 5 as you could tell, all of them were credit spreads.
 6 You didn't need an exit criteria. Now you need an
 7 exit criteria. How do we do that most efficiently
 8 so that we protect our clients of, oh, well, gee,
 9 it crashed way, way down and all of a sudden I can't
 10 get out because I don't have an exit.

11 Q Got it.

12 A And so we have been working on multiple
 13 iterations on this for a long time of how do we get
 14 exit approval, found that sending out updates on a
 15 Friday saying, okay, here's where our exit approvals
 16 need to be. We need your consent on those exit
 17 approvals because it's not like in futures, well,
 18 where it hits that price, well, it's kind of easy
 19 to understand whereas this we have to keep watching
 20 the markets. We have to understand, you know, is
 21 volatility dropping and, therefore, all the prices
 22 are dropping. Even though the price is moving in
 23 our direction, we had to get out of it, you know,
 24 those type of things.

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1 Q Got it. So I want to return to
 2 this likelihood of achieving the target gain
 3 piece. So your testimony is that in April
 4 of 2018 you and Mr. Gecas worked together to sort
 5 of make the target gain a little bit more modest and
 6 also more likely to occur, is that --

7 A Right.

8 Q -- fair to say?

9 A Yeah.

10 Q All right. And your testimony is
 11 that after April of 2018, those target gains were
 12 gains that were 60 to 70 percent likely to occur,
 13 is that right?

14 A Right.

15 Q So is that something you told to clients?

16 A I don't know that we ever said exactly
 17 what the targeted gain was based on. We just said
 18 that it's more likely than not.

19 Q And this is something that you said to
 20 clients?

21 A Yes, same people.

22 Q Right. And is this something that you
 23 had brokers say to clients, that the targeted gains
 24 were more likely than not?

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1 A Yes.

2 Q So, you know, let me ask you about
 3 that. From April of 2018 through the present,
 4 you know, have customers made money during that time
 5 period overall or have they lost money?

6 A Overall I would say they lost money.

7 Q So how is it -- and I know that you
 8 know this and I just don't. How can it be that
 9 trades are 60 to 70 percent likely to achieve this
 10 target gain, which is solidly in the black -- even
 11 accounting for commissions and fees, right?

12 A Um-hmm.

13 Q Yes?

14 A Yes.

15 Q So how can it be 60 to 70 percent
 16 likely to achieve the target gains and yet be
 17 negative overall?

18 A Depends on the size of your loss and
 19 the size of your gains. We had some very good
 20 months, had some so-so months, had some very bad
 21 months. November-December of -- November of last
 22 year was a very bad month. You had some massive
 23 movements in the markets which were well outside
 24 of a one-sigma move or one standard deviation

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1 move that given the trades we were making, blew up
 2 our positions. It's more about you have -- there's
 3 the probability of something happening and then
 4 the actual happening. If I knew the probability
 5 and the actual would be the same, you know, I look
 6 at it this way. Every trade we put out there was
 7 a good trade based on the fundamentals that we saw,
 8 the markets that we saw and, you know, one example
 9 would be a lean hog. We said, you know, prices are
 10 going to have to go down, you know. The inventories
 11 are the highest they've been since 1967, you know.
 12 Economics would tell you that prices have to come
 13 down. Prices climbed, climbed, climbed and climbed.
 14 Never came down.

15 Q So when customers lose money in
 16 recommended trades, do those losses ever exceed
 17 the target max loss? Are you able to get out at the
 18 price you want to get out at all the time?

19 A I would say predominantly, yes, we'd be
 20 out at our target max.

21 (Whereupon CFTC Exhibit No. 65 was
 22 marked for identification, MM.)

23 Q All right. Mr. Donelson, I want to hand
 24 you what I've marked as CFTC Exhibit 65. And as you

| | |
|--|---|
| <p style="text-align: right;">Page 173</p> <p>1 will see, it's a group exhibit comprised of an email 2 and then trade recommendations for March 27, 2018. 3 And I've given it away a bit, but I was going to 4 ask you do you recognize this document and, if so, 5 can you tell me what it is, please. 6 A It is a trade recommendation. 7 Q And this was a trade recommendation 8 that you gave to your brokers to send to customers, 9 correct? 10 A Correct. 11 Q All right. So if you look at the 12 cover email here, it looks like you're sending 13 recommendations for one contract and then two 14 contracts and then three contracts and then five 15 contracts and then ten. Am I reading that right? 16 A Correct. 17 Q And it looks like there are attachments 18 to this email that have substantially identical PDFs 19 but that recommend different numbers of contracts, 20 is that right? 21 A Correct. 22 Q So what's going on there? Why 1, 2, 3, 23 5 and 10, please. 24 A Those are based on the amount in the</p> | <p style="text-align: right;">Page 175</p> <p>1 A It's close. 2 Q So why is that the magic number? 3 A Because it would be the margin 4 calculation coming back. If you're going to put 5 on four different trades, then if the margin of each 6 one of these would be around 500, 10,000, 500. So 7 by putting all four you'd have \$2,000 of margin on 8 and that would be 20 percent of the 10,000 that 9 you have. 10 Q Got it. 11 A That's kind of the math behind it. The 12 idea is not to trade the entire account obviously. 13 Q All right. And looking again very 14 quickly at Exhibit 65, you know, I don't see -- 15 I don't see like an exit price on Exhibit 65. Can 16 you tell me where that is, please, if it's here. 17 A Oh, I screwed up and it says order 18 twice, if you noticed. It says order, order. 19 Q Oh, so that second order is supposed to 20 be the exit? 21 A Yeah, yeah. 22 Q Got it. 23 A Do you mind if we take a small break? 24 Q Yeah, yeah, of course.</p> |
| <p style="text-align: right;">Page 174</p> <p>1 clients' accounts and I mentioned earlier kind of 2 what is their risk. Before this they were running 3 it through a system that would pick up something 4 and put it in. This was we did 1, 2, 3, 5 and 10. 5 So the customer -- I would send this to the brokers 6 with a PDF for each number of contracts so that 7 when they send out the recommendation, it's not I'm 8 recommending to you one contract, I'm recommending 9 to you two contracts so that when they get the 10 approval back, the number of contracts matches 11 what their approval is. 12 Q Got it. So -- 13 A But there's no difference in the underlying 14 contract itself. 15 Q So how do you determine who gets 16 the one contract, two contracts, three contracts? 17 A Like I said, it's based on how much 18 excess margin they have and how much margin it 19 takes to do this trade, and then we try to keep 20 them within like 20 percent of all the trades. 21 Q Is it fair to say that for every \$10,000 22 in equity or in excess margin that a customer has 23 in their account, they get recommended one contract? 24 Is that accurate or no?</p> | <p style="text-align: right;">Page 176</p> <p>1 MR. BURDEN: Off the record, please. 2 (Whereupon a recess was taken from 3 2:08 p.m., to 2:25 p.m., after which 4 the following proceedings were had:) 5 MR. BURDEN: Let the record reflect 6 that neither I, nor any of my colleagues had 7 any substantive discussions with the witness 8 or his counsel, correct? 9 MS. WING: So stipulated. 10 THE WITNESS: Correct. 11 MR. BURDEN: Joe, take it away, if you 12 would, please. 13 FURTHER EXAMINATION 14 BY MR. PATRICK: 15 Q Mr. Donelson, you spoke earlier 16 about this percentage chance of reaching the profit 17 target. Do you remember that? 18 A Yes. 19 Q And it was roughly 30 to 50 percent? 20 A Yeah, but it's also a very high profit 21 target for that trade. That's kind of the high end 22 of what you could possibly make on that trade. 23 Q And I think you testified that later on 24 you started to, along with Scott Gecas, develop some</p> |

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1 trades that might have had a slightly higher chance,
 2 percentage chance of reaching that profit target,
 3 is that right?
 4 A More likely we moved the way we calculated
 5 the target down.
 6 Q Okay.
 7 A Not necessarily that we changed
 8 the trade itself. It's just we said, well,
 9 let's move the target down to a range so the
 10 target profitability gets close more likely than
 11 not versus kind of the very high end.
 12 Q Okay. And you said that this was
 13 something that you were discussing with your
 14 customers and your salespeople and that your
 15 expectation was that they were going to communicate
 16 that --
 17 A Right.
 18 Q -- to the customers?
 19 A And the sales manager was in charge
 20 of managing those salespeople.
 21 Q Okay. So it strikes me that you
 22 have the ability to go back and take a look at the
 23 trades that you've been doing to determine whether
 24 or not, you know, these profit targets are being

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1 achieved at the percentage rates that --
 2 A You would expect.
 3 Q -- you've been discussing with your
 4 customers and with your salespeople, correct?
 5 A Correct.
 6 Q Did you do that?
 7 A Yeah, we did look back. Like I said,
 8 these two -- this set of trades was the first time
 9 we've come out with these. It was an evolving
 10 process to figure out, well, what is it that's
 11 the best way to depict these trades.
 12 Q Okay. But as you're sitting here
 13 today you've got -- since say February of 2018,
 14 you've got somewhere around 16 months, right, of
 15 trading performance since that time?
 16 A Right.
 17 Q As you're sitting here today, have
 18 you gone back and looked at the trading that your
 19 customers have done to determine whether or not that
 20 profit target percentage is bearing itself out in
 21 the actual trades that you're placing?
 22 A I have looked at it. I haven't done
 23 the exact percentage, but I think it's a little --
 24 these were a little high. The target was a little

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1 too high. But we also at the end of 2018 changed
 2 our trading style again just because this trade
 3 was not being consistent in its profitability to our
 4 customers. We would have -- like I said, we would
 5 have good months. We would have bad months. And
 6 it would not bear itself out in a way that said,
 7 hey, I can consistently make money with this trade.
 8 And that's what I've been focused on the whole time
 9 I've owned the firm is consistent profitability by
 10 the customer in a way that makes sense for me as
 11 a business and for them as a customer.
 12 Q So it sounds like you said that you did
 13 actually go back and do some --
 14 A Right.
 15 Q -- review of actual client trading and
 16 you determined that this 35 to 50 percent number
 17 was maybe a little bit high?
 18 A Maybe a little bit high.
 19 Q And how did you determine that?
 20 A Just looking at the profitability
 21 of the trades themselves and what they bore out
 22 to in those trades.
 23 Q Okay. So did you find that less
 24 than 35 to 50 percent of the trades that you were

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1 recommending for your customers were reaching that
 2 profit target?
 3 A Could you ask that question again, please.
 4 Q Sure. So were you finding that less
 5 than 35 to 50 percent of the trades that you were
 6 recommending for your customers were reaching that
 7 profit target?
 8 A Yes.
 9 Q Do you remember how much, what the
 10 percentage was or how many of the trades weren't
 11 reaching that?
 12 A Well, I'm trying to think of the
 13 best way to say this because what we were trying
 14 to bound is what's the gain and loss potential of
 15 a trade. If it made a profit, it still could have
 16 made a profit but didn't hit the target or it could
 17 have lost money but not lost the target. So what
 18 we're trying to do with that information was really
 19 bound kind of what your probable gain or loss --
 20 you know, how much gain or loss could you possibly
 21 make on it. I would say sometimes it would be we
 22 would exit the trade. It might have gotten to that
 23 point, but we would sit on that exit recommendation
 24 and leave the trade earlier than that. So I'm not

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1 sure how much of it is the probability versus
 2 what actually happens in reality because you're
 3 trading along the way here and you're sitting out
 4 recommendations and telling them, look, we're at
 5 40 percent profit. It's a good time to take off
 6 the trade. Could it have gotten there, possibly.
 7 But that was one of the reasons why we lowered that
 8 targeted goal, was to get to it you would have to
 9 hold the trade -- it's like you'd be profitable
 10 by, say, 30 percent. And then you're holding it,
 11 holding it, holding it, holding it and our clients
 12 were more in tune with, look, if I've got a profit,
 13 let's put it in our pocket and go to the next trade.
 14 Q But your testimony was, though, that when
 15 you did make that adjustment, that the probability
 16 then increased, correct?
 17 A The probability that you could hit
 18 that target, yes. That's not the same thing as
 19 saying that the target -- that every trade I made,
 20 I can't tell you I'm going to hit 50 percent of the
 21 time it's going to be profitable.
 22 Q No, I'm only referring to the
 23 percentage chance of reaching the profit target.
 24 So the percentage chance of reaching the profit

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1 target, right --
 2 A All other things being equal, right.
 3 Q -- it previously was 35 to 50 percent
 4 and that's what you were reporting to -- or you were
 5 communicating to your customers --
 6 A Yeah, it was a little under 50 percent.
 7 Q -- and to your salespeople. And
 8 then when you made the adjustment, that percentage
 9 chance of reaching the profit target moved up,
 10 correct? Instead of being 35 to 50, it was
 11 somewhere closer to 60?
 12 A Yeah, probably 50 to 60.
 13 Q Okay. Did you look at the
 14 trading during that time period too? Did you
 15 compare the actual trading that you were doing
 16 to these projections that you were making about
 17 profit target?
 18 A Well, like I said, it's the difference
 19 of what's happening when you're making the trade.
 20 This is all statistical at the front end, right,
 21 that says if it falls within this parameter and
 22 if it moves here, it's going to have this type of
 23 profitability. The second I put that trade on,
 24 all other things don't remain equal. And so we're

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1 going to go back and do what's best for the customer
 2 and we may exit before we hit the target. That's
 3 not to say we couldn't have possibly hit the target.
 4 They're two different questions.
 5 Q Well, I guess what I'm trying
 6 to understand is did the analysis that you did
 7 reviewing your customers' actual trading match what
 8 you were reporting to your customers and through
 9 your salespeople to their customers regarding these
 10 profit targets that you were reporting to them in
 11 the trade recommendations?
 12 A I just think of it as two different
 13 things. I guess I'm not sure how to -- when you
 14 talk about what is a targeted gain or loss, I'm
 15 trying to give you a band of which -- that says
 16 here's kind of where the high and low are going to
 17 be and we're going to be in this area. And then as
 18 you go through the trade and as things move around,
 19 you know, we're going to exit or we're going to get
 20 out of a trade possibly earlier, but it could have
 21 possibly hit that target. I haven't ever done that
 22 analysis which says if we would have carried this
 23 trade all the way out, would it have hit the target.
 24 That's a different analysis.

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1 FURTHER EXAMINATION
 2 BY MR. BURDEN:
 3 Q Mr. Donelson, so between December
 4 of 2017 and April of 2018 what percentage of the
 5 recommended trades achieved the targeted gain?
 6 A I want to say -- well, before December
 7 '18? I mean, what was the time frame? I'm sorry.
 8 Q You were telling me that this 35 to
 9 50 percent number was the one that was being used
 10 between December of '17 when you joined, right?
 11 A No, before that. The December and
 12 January they were doing the first recommendations
 13 you showed. And the max gain and loss on that are
 14 purely --
 15 Q That's right, okay.
 16 A -- they're purely accurate. There's
 17 no guessing. They just gave you max gain and max
 18 loss.
 19 Q So January '18 was when your debit spread
 20 started, right?
 21 A February.
 22 Q February. So between February '18 and
 23 April of 2018 what percentage of the recommended
 24 trades achieved the targeted gain?

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1 A I want to say two out of eight.
 2 Q So that is --
 3 A 25 percent.
 4 Q All right. So between April of 2018 and
 5 the end of 2018 what percentage of the recommended
 6 trades achieved the targeted gain?
 7 A I don't know that statistic off the top
 8 of my head.
 9 Q Is it less than 60 percent?
 10 A Probably, yeah.
 11 Q Is it less than 50 percent?
 12 A Yes.
 13 Q Is it less than 40 percent?
 14 A I'd have to look at the data.
 15 Q All right. So throughout your tenure
 16 at Long Leaf have you done any backtesting for your
 17 strategies?
 18 A Some of the strategies we have
 19 backtested using QuikStrike, which you can do.
 20 A lot of the strategies gets into -- one of the
 21 things I've done with our newer strategies is lower
 22 our commission rate. The lift is too big and that
 23 commission rate was at 35.
 24 Q Well, let me make it a little bit

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1 simpler and we can band it by time. So between
 2 February of 2018 and April of 2018 did you backtest
 3 any of those credit spread strategies that you were
 4 recommending -- I'm sorry, debit spread strategies
 5 you were recommending?
 6 A We backtested them. We tested them
 7 on different markets. It got into the question
 8 of did we hit the right point, did we -- one thing
 9 that has changed also was the strategy was always
 10 being traded almost at the same time every month
 11 because it's kind of a monthly trade, and that
 12 was an issue.
 13 Q So an issue for what? Like are you
 14 saying --
 15 A You're entering the same market conditions
 16 with four trades.
 17 Q So it sounds like your testimony
 18 is that you tried to backtest but it wasn't an
 19 effective simulation. Am I understanding that?
 20 A It really isn't until you can actually --
 21 we don't have that type of computer capability. We
 22 can backtest with what we have, which is QuikStrike,
 23 but we don't have a full quant base to build off of.
 24

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1 FURTHER EXAMINATION
 2 BY MR. PATRICK:
 3 Q What about just a track record? Do you
 4 keep track of a track record?
 5 A Yeah, we kept track of all of our trades.
 6 We do now too.
 7 Q So roughly you said about four trades
 8 per month, correct?
 9 A Um-hmm.
 10 Q And that's not counting these additional
 11 trades that you might see that are more --
 12 A Opportunistic.
 13 Q Opportunistic, yes. Thank you.
 14 So you maintained a track record for each of your
 15 trade recommendations?
 16 A Yes.
 17 Q And how did you do that? Like physically
 18 how did you do it? Did you create a spreadsheet?
 19 How did you do it?
 20 A I downloaded all of the trade data
 21 from Gain -- you can get that all electronically --
 22 and then built a database of all the trades and
 23 basically calculate out what the gain and loss on
 24 the trades were.

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1 FURTHER EXAMINATION
 2 BY MR. BURDEN:
 3 Q Did you calculate that out for -- what
 4 period did you calculate that out for, please.
 5 A All the way through August of 2018,
 6 and then we switched to Cunningham. So we've had
 7 to rebuild and retool everything trying to do that,
 8 and then I actually went back in the history just
 9 to figure out what had gone on before.
 10 Q What was sort of the starting period
 11 for this track record that you put together in
 12 this database? It's what through August of '18?
 13 A Probably like January of '17.
 14 Q All right.
 15 A Sometimes I could not get it to
 16 tie to the reports. That was always why I was
 17 fearful of sending it out to too many people because
 18 it was like I couldn't get the trades to tie out
 19 to what happened on the report. So usually only
 20 if somebody specifically asked me or something like
 21 that would I try to put something together. It was
 22 a lot of work.
 23
 24

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1 FURTHER EXAMINATION
 2 BY MR. PATRICK:
 3 Q You said it was a database?
 4 A Um-hmm.
 5 Q What software did you use to --
 6 A Access.
 7 Q Access. So it's an Access database?
 8 A Um-hmm.
 9 Q And was that produced to us?
 10 A No. That's just a -- it's basically
 11 just something that I download all the fills and
 12 everything else. I use it to try to analyze things,
 13 but it's got its perks. It works sometimes. It
 14 doesn't work sometimes. Not something overly shared
 15 with a lot of people because I just don't have a lot
 16 of confidence in it yet.
 17 Q Outside of calculating trading
 18 performance on the recommended trades, what else
 19 do you use that database for?
 20 A Cash movements, tracking cash movements
 21 just to make sure I see what it is for some of the
 22 AML procedures, like if somebody takes out more than
 23 10,000 or something like that. Even though the FCM
 24 is technically in charge of that, I would still want

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1 to see did I know about it, why did they take it
 2 out, those type of things.
 3 MR. BURDEN: When did you put together
 4 this database, Mr. Donelson?
 5 THE WITNESS: Oh, I've been building
 6 it off and on since I started. Probably didn't
 7 really get most of it built until the fall
 8 of 2018.
 9 BY MR. PATRICK:
 10 Q Have you created any sort of scripts
 11 or queries for that, like queries that you use
 12 repeatedly or design programs to analyze certain
 13 kinds of trades in the database?
 14 A Not really. It's more just here's
 15 the trade and here's the profitability of that
 16 trade. I have not tried to build -- I'm not really
 17 sure what you mean by fancy scripts or anything like
 18 that. It's basically a database that I then can put
 19 in Excel and play around with.
 20 Q Can you use it to query an individual
 21 customer --
 22 A Yeah.
 23 Q -- and that customer's trades and
 24 profitability?

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1 A Right.
 2 Q And is that what you use to create
 3 those kinds of reports for customers?
 4 A Yeah. The only problem is is anything
 5 to do with if something got exercised into a future,
 6 that's not the way it works in that system. So you
 7 have to play around with it. That's always been
 8 the difficulty of it and it doesn't tie. That's
 9 a different issue.
 10 Q And what does this database that you
 11 created, what does it say about profits in the
 12 customers' accounts or tracking the profitability
 13 of individual trades?
 14 A Well, we have -- the way we -- I built
 15 it is so that I can take all those legs and call it
 16 one trade so that I don't have to go, well, how much
 17 did they make on this leg. Then we had I would say
 18 looking from February through November -- or through
 19 August we were making profits on trades. We were
 20 losing money on trades. We weren't consistent
 21 with what we were trying to do, which is we want
 22 to have a consistent profitability. That means
 23 you're taking lower risk but you're taking lower
 24 reward, and that's kind of where we've moved

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1 our trading to.
 2 Q And how does this database get updated? Do
 3 you have to manually update it with the new trades?
 4 A Yeah.
 5 Q So it doesn't automatically get fed those
 6 new trades from Cunningham or Gain?
 7 A No, it does not. Cunningham doesn't
 8 provide electronic files other than PDFs, so it's
 9 not as easy. I don't go through the entire days
 10 of trading and do it. It's -- we build it off the
 11 worst entry and worst exit prices saying, okay,
 12 this is the worst price I got in at and this is
 13 the worst price I got out at, and in an individual
 14 that did two of these trades it may or may not
 15 exactly pull their statement. And we've been
 16 starting to use that over the last month or so as
 17 I've felt more comfortable with that data being
 18 accurate, and it's always close to what their net
 19 liq is. It's not perfect, but it's close. And I
 20 know that it's not going to be because if one person
 21 had a slightly better entry than that, it's going
 22 to be a different number, but we track it trade by
 23 trade.
 24

| | |
|---|---|
| <p style="text-align: right;">Page 193</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MR. BURDEN:</p> <p>3 Q All right. I think you testified</p> <p>4 as well that after December of 2018 you changed</p> <p>5 your strategy again at Long Leaf, is that right?</p> <p>6 A Correct.</p> <p>7 Q What did you change it to?</p> <p>8 A We changed it to a -- there's two</p> <p>9 main trades that we make. One is a volatility swap,</p> <p>10 which is buying a back strangle and then selling a</p> <p>11 front strangle but that the front strangle actually</p> <p>12 has higher volatility than the back. So what that</p> <p>13 does is I get to collect more on a short-dated</p> <p>14 option and I, therefore, significantly reduce</p> <p>15 the cost of the back strangle. And we've done</p> <p>16 that in metals, currencies, oil. The only thing we</p> <p>17 almost never -- well, I wouldn't say almost never.</p> <p>18 I have never traded it is anything to do with the</p> <p>19 equity indices and mostly because our customers</p> <p>20 already have exposure to the equity indices. And</p> <p>21 then the other trade is a similar trade but for</p> <p>22 very low volatility assets, which is actually</p> <p>23 a gut strangle.</p> <p>24 Q And did you assess a likelihood</p> | <p style="text-align: right;">Page 195</p> <p>1 asking is if you can get QuikStrike to tell you</p> <p>2 that there's a 35 to 50 percent chance of obtaining</p> <p>3 a target gain, can you say, hey, QuikStrike, tell</p> <p>4 me what the likelihood is of achieving any</p> <p>5 profitability, even a single cent?</p> <p>6 A Well, you look at what are the factors</p> <p>7 that are going to affect it, not necessarily is it a</p> <p>8 probability. It's the -- the primary one is usually</p> <p>9 falling volatility is almost at any time one of the</p> <p>10 killers of the trade, if it falls and you're in a</p> <p>11 debit position and then kind of where would it</p> <p>12 have to move to. QuikStrike could do those things.</p> <p>13 It's not -- I mean, you have to play around with it.</p> <p>14 You have to play around with a lot of different</p> <p>15 aspects of it.</p> <p>16 Q Got it. So if you wanted the number</p> <p>17 of a trade, you know, the percentage likelihood of</p> <p>18 a trade that would break even, you'd have to monkey</p> <p>19 around with the legs and create a trade that breaks</p> <p>20 even, right, and it would tell you the likelihood</p> <p>21 that that would happen?</p> <p>22 A It would tell you the probability</p> <p>23 of it happening, not necessarily the likelihood.</p> <p>24 Q Got it.</p> |
| <p style="text-align: right;">Page 194</p> <p>1 of obtaining target gains on these volatility</p> <p>2 swaps and gut strangles?</p> <p>3 A We lay them out a different way to</p> <p>4 kind of tell them what their exposure is, what their</p> <p>5 margin is, what happens when the front expires,</p> <p>6 here's how much you're going to have to cover to</p> <p>7 make it profitable.</p> <p>8 Q Got it. Going back again to the</p> <p>9 likelihood of profitability with respect to all of</p> <p>10 the recommended trades, did you assess -- you know,</p> <p>11 we've been talking about the likelihood of achieving</p> <p>12 the target gain, right?</p> <p>13 A Right.</p> <p>14 Q So did you assess the likelihood of</p> <p>15 achieving any profitability at all?</p> <p>16 A Yeah. Every -- I mean, when we look</p> <p>17 at the trades and we build them up, there's some</p> <p>18 assessment of what's going to have to happen to this</p> <p>19 asset. And I would say, you know, like any person</p> <p>20 trading, every trade you make makes sense. It looks</p> <p>21 at what we're looking at in the marketplace and we</p> <p>22 believe it'll be profitable. That's not the same</p> <p>23 thing as saying did it end up that way.</p> <p>24 Q No, no, I understand. But what I'm</p> | <p style="text-align: right;">Page 196</p> <p>1 A They're two different things.</p> <p>2 Q So did you ever do that exercise?</p> <p>3 Did you ever say let's put together a trade that</p> <p>4 makes, you know -- we've got a trade. We've got</p> <p>5 different strike prices. Let's mess around with</p> <p>6 the strike prices until we find a trade that makes</p> <p>7 one cent. Did you ever do that? I'm not saying</p> <p>8 you should do that or that it makes sense. I'm</p> <p>9 just asking if you did.</p> <p>10 A No.</p> <p>11 (Whereupon CFTC Exhibit No. 66 was</p> <p>12 marked for identification, MM.)</p> <p>13 Q Okay. Mr. Donelson, I want to hand</p> <p>14 you what I've marked as CFTC Exhibit 66. Do you</p> <p>15 recognize this document? If so, can you tell me</p> <p>16 what it is, please.</p> <p>17 A Yes.</p> <p>18 Q All right. What do you recognize</p> <p>19 Exhibit 66 to be?</p> <p>20 A It's a trade recommendation I sent out</p> <p>21 to our brokers.</p> <p>22 Q All right. So this first attachment,</p> <p>23 it's titled -- it's a file called Customer Analysis.</p> <p>24 It's on the second page of Exhibit 66. Do you see</p> |

| | |
|--|--|
| <p style="text-align: right;">Page 197</p> <p>1 that?</p> <p>2 A Yes.</p> <p>3 Q So did you create this?</p> <p>4 A Yes.</p> <p>5 Q What is this thing, please.</p> <p>6 A It is the -- this is how we determine</p> <p>7 if somebody has enough margin to make the trade.</p> <p>8 So we start with excess margin in their account as</p> <p>9 of whatever day this was, and then expected is --</p> <p>10 expected is what each one of the brokers has forward</p> <p>11 at the time in the system that said this is how</p> <p>12 many contracts per trade they were going to do.</p> <p>13 And then it's just determining to make sure that</p> <p>14 we are putting somebody in margin deficit at the</p> <p>15 time of the trade because the way it was traded</p> <p>16 at that time through Gain, they couldn't make that</p> <p>17 determination because they were doing it as a block</p> <p>18 trade. So we had to make sure that we did not put</p> <p>19 somebody in margin deficit at the time of trade.</p> <p>20 Q Got it. So this is just a workup</p> <p>21 that you put together and it would -- the Expected</p> <p>22 column is the number of contracts that are going</p> <p>23 to be recommended to a client and that's based</p> <p>24 on their available margin, is that correct?</p> | <p style="text-align: right;">Page 199</p> <p>1 A I usually hid that when I printed it out.</p> <p>2 Q Got it. So the Expected column is what</p> <p>3 you're going to let them trade?</p> <p>4 A Right.</p> <p>5 Q Okay. And if you look -- if you just</p> <p>6 turn the page to the third, fourth, fifth page of</p> <p>7 Exhibit 66, we've got the actual recommendation,</p> <p>8 right?</p> <p>9 A Um-hmm.</p> <p>10 Q Yes?</p> <p>11 A Yes.</p> <p>12 Q And this one is -- it may seem silly</p> <p>13 that we keep harping on it, but it just doesn't</p> <p>14 show up on the transcript unless you say yes. It</p> <p>15 just says grunt or something. So I want to direct</p> <p>16 your attention to where it says Trade Approval and</p> <p>17 it says Exit Order: Market. What's going on there,</p> <p>18 please.</p> <p>19 A This is still us trying to figure out</p> <p>20 how to get that exit approval on the front. This</p> <p>21 wasn't -- this was an attempt at it until somebody</p> <p>22 explained to me that market meant something</p> <p>23 different than I would think it meant.</p> <p>24 Q What did you think it meant?</p> |
| <p style="text-align: right;">Page 198</p> <p>1 A Correct.</p> <p>2 Q All right.</p> <p>3 A Actually, let me correct that.</p> <p>4 Q Go ahead, yeah.</p> <p>5 A The expected is how many they have</p> <p>6 agreed to -- I know I created this spreadsheet</p> <p>7 but this -- actually, it's a determination of two</p> <p>8 different things.</p> <p>9 Q What are those things, please.</p> <p>10 A How many they said they would do and</p> <p>11 then do they have adequate margin to do that many.</p> <p>12 So if one was higher -- you know, if they agreed</p> <p>13 to do 3 but they could do 15, they're going to do 3.</p> <p>14 If they agreed to do 3 but can only do 1, then we're</p> <p>15 going to send it only as 1. That's what the whole</p> <p>16 intent of that was.</p> <p>17 Q Got it. So what does the expected</p> <p>18 show? Does it show what they want to do or what</p> <p>19 they can do?</p> <p>20 A It would first start with what they</p> <p>21 want to do. But if they cannot enter that many,</p> <p>22 then it would be in what they can do.</p> <p>23 Q Okay. And where's the column for what</p> <p>24 they want to do?</p> | <p style="text-align: right;">Page 200</p> <p>1 A Well, I would think that I could</p> <p>2 exit at target loss if that was the market, and</p> <p>3 that's not the way it would be interpreted. We</p> <p>4 were still trying to figure out how to -- this was</p> <p>5 tricky, and it's still tricky to this day, is how</p> <p>6 to get exit approval for an option trade or any</p> <p>7 type of trade where you're trying to exit a trade</p> <p>8 but there's four pieces of it. So are you asking</p> <p>9 for exit of each component or are you asking for</p> <p>10 the whole thing. So, for example, we may want</p> <p>11 to buy back a specific leg that's getting close to</p> <p>12 being in the money, but it may be cheaper for them</p> <p>13 to buy it. Is that part of the total exit approval?</p> <p>14 Is that a specific exit? It's something we've</p> <p>15 actually talked to quite a few people about how's</p> <p>16 the best way to get this exit approval done.</p> <p>17 Q And how did you ultimately get the exit</p> <p>18 approval done?</p> <p>19 A On this one it would have been something</p> <p>20 we sent out directly to them.</p> <p>21 Q Well, it seems like per Exhibit 66</p> <p>22 you didn't go back to the clients. You're like</p> <p>23 we're going to -- the trade recommendation reflects</p> <p>24 that you're going to try to get out of the trade</p> |

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|---|--|
| <p style="text-align: right;">Page 201</p> <p>1 at, you know --</p> <p>2 A Yeah, you can see our targeted gains</p> <p>3 are significantly lower now. That's where we --</p> <p>4 Q Are you all right over there?</p> <p>5 A Well, I don't usually wear glasses</p> <p>6 and I can't -- I'm trying to go between looking</p> <p>7 at you and reading at the same time. So, yeah,</p> <p>8 we interpreted market that if we could hit the</p> <p>9 targeted gain, we'd get out at the targeted gain.</p> <p>10 And that's -- like I said, we're still working on</p> <p>11 how to get that approval in a timely manner in the</p> <p>12 structure we have because a lot of trades are --</p> <p>13 MS. WING: There's no question pending.</p> <p>14 (Whereupon CFTC Exhibit No. 67 was</p> <p>15 marked for identification, MM.)</p> <p>16 BY MR. BURDEN:</p> <p>17 Q All right. Mr. Donelson, I want to</p> <p>18 hand you what I've marked as CFTC Exhibit 67.</p> <p>19 If you could take a look at it for me, please,</p> <p>20 and tell me if you recognize it.</p> <p>21 MS. WING: Is this the only 67?</p> <p>22 MR. BURDEN: Yeah. Do you have another</p> <p>23 one?</p> <p>24 MS. WING: I thought I did. Let me</p> | <p style="text-align: right;">Page 203</p> <p>1 up anywhere between those two numbers, it's worth</p> <p>2 \$4,000.</p> <p>3 Q All right. So is that the value that</p> <p>4 customers achieved from this trade recommendation?</p> <p>5 A No, they received something higher than</p> <p>6 that.</p> <p>7 Q All right. So this was a good trade</p> <p>8 recommendation?</p> <p>9 A Right.</p> <p>10 Q All right. So it says Return on Trade</p> <p>11 at the bottom there. Where is return on trade?</p> <p>12 Is that 2.22 percent?</p> <p>13 A Yes.</p> <p>14 Q Am I reading that right?</p> <p>15 A Um-hmm.</p> <p>16 Q All right. So how is that return on</p> <p>17 trade determined?</p> <p>18 A The 104.89 divided by 4723.24, I think.</p> <p>19 Q All right. So rather than -- what</p> <p>20 are the factors that go into that return on trade?</p> <p>21 It sounds like in this case that that return was</p> <p>22 realized, is that correct?</p> <p>23 A I don't know if it was at that exact</p> <p>24 number, but it was close.</p> |
| <p style="text-align: right;">Page 202</p> <p>1 double check here. Oh, that's 57. I just</p> <p>2 didn't want to duplicate.</p> <p>3 MR. BURDEN: No, that's fine. That's</p> <p>4 a pain when that happens.</p> <p>5 Q Do you recognize this document,</p> <p>6 Mr. Donelson?</p> <p>7 A Yes.</p> <p>8 Q Can you tell me what Exhibit 67 is, please.</p> <p>9 A It is a trade recommendation.</p> <p>10 Q All right. Is this a trade recommendation</p> <p>11 that you gave to your brokers to send to clients?</p> <p>12 A Yes.</p> <p>13 Q All right. So let's take a look</p> <p>14 at this because the format is different than some</p> <p>15 of the earlier recommendations, right?</p> <p>16 A Correct.</p> <p>17 Q All right. So we've got our price.</p> <p>18 We've got our value at expiration. What's value</p> <p>19 at expiration, please.</p> <p>20 A In this case this is a gut strangle</p> <p>21 and the minimum value that the gut strangle would</p> <p>22 be worth is the -- is \$4,000 because you're buying</p> <p>23 a 142 call. You're selling a 146 put -- I mean</p> <p>24 you're buying a 146 put. Worst case, if it ends</p> | <p style="text-align: right;">Page 204</p> <p>1 Q So how are we getting this return on</p> <p>2 trade number?</p> <p>3 A Can I ask a question? What do you</p> <p>4 mean how are we getting? How are we mathematically</p> <p>5 calculating it?</p> <p>6 Q Yeah. How is that assessed? So you're</p> <p>7 telling -- what are you telling customers here?</p> <p>8 A Well, we've told people in this type of</p> <p>9 trade that the return is going to be fairly low.</p> <p>10 You've got to think of it in dollar terms because</p> <p>11 you're paying a lot of money for the trade that</p> <p>12 has an ending value to it. So while you're paying</p> <p>13 \$5,000 for something that's worth 4,000, it's always</p> <p>14 worth 4,000.</p> <p>15 Q Got it.</p> <p>16 A So -- and then this basically just</p> <p>17 shows you that we're going to be targeting 2 to</p> <p>18 3 percent on that type of trade.</p> <p>19 Q And how do you determine that the</p> <p>20 2.22 percent is the amount you hope to obtain</p> <p>21 on it?</p> <p>22 A In this case it is using our QuikStrike,</p> <p>23 we figure out the number in the middle here, which</p> <p>24 is 4828.13, and that would be what is the value</p> |

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|---|--|
| <p style="text-align: right;">Page 205</p> <p>1 of the buy at the expiration of on 2/1/18 -- 19, 19.</p> <p>2 Q Got it.</p> <p>3 A And then that says, well, then you're</p> <p>4 going to be -- the long position's going to lose</p> <p>5 \$317 and what you sold will make you 422, so you'll</p> <p>6 be net ahead 108 and we asterisk with it. That</p> <p>7 assumes that futures stays at the current price</p> <p>8 with all the same volatilities.</p> <p>9 Q Got it. So this return on trade</p> <p>10 percentage that we see in recommendations after</p> <p>11 this date, that's a return on trade that assumes</p> <p>12 that futures stay at the current price and the</p> <p>13 current value, is that right?</p> <p>14 A Correct.</p> <p>15 Q So your testimony was that Mr. Gecas</p> <p>16 primarily came up with these trading strategies,</p> <p>17 right?</p> <p>18 A Correct.</p> <p>19 Q So at some point Mr. Gecas left the firm,</p> <p>20 is that right?</p> <p>21 A Correct.</p> <p>22 Q And when was that, please.</p> <p>23 A December 14, 2018.</p> <p>24 Q All right. So after December of 2018</p> | <p style="text-align: right;">Page 207</p> <p>1 at all. In fact, that's kind of the point, right?</p> <p>2 A Correct.</p> <p>3 Q So how did Mr. Gecas, if you know, if</p> <p>4 he told you, how did he come up with these trades?</p> <p>5 How did he know what to trade or what prices?</p> <p>6 A He would do the technical analysis</p> <p>7 on those markets, bonds, soybeans, looking at,</p> <p>8 you know, all the technical stuff that I'm not --</p> <p>9 Bollinger Bands and whatnot. He would determine,</p> <p>10 hey, this is a market that needs to get traded.</p> <p>11 Then he and I would really work out, well, what</p> <p>12 are the strikes, what are the prices we want to --</p> <p>13 you know, what is that structure that we want to</p> <p>14 put on that trade.</p> <p>15 Q So Mr. Gecas would determine what he</p> <p>16 wanted to trade and how he wanted those trades to</p> <p>17 be structured based on technical analysis, correct?</p> <p>18 A Correct.</p> <p>19 Q And then after he came up with what</p> <p>20 he wanted to do, you would work with Mr. Gecas and</p> <p>21 you'd come up with what the strike prices should be,</p> <p>22 is that right?</p> <p>23 A Strike prices and we would review</p> <p>24 the economics, kind of what is out there in the</p> |
| <p style="text-align: right;">Page 206</p> <p>1 who came up with these strategies for Long Leaf?</p> <p>2 A I did.</p> <p>3 Q Did you have any help with that?</p> <p>4 A Other than what I had learned from</p> <p>5 Scott for the preceding 12 months and then another</p> <p>6 trade that we had tried for a few clients that was</p> <p>7 successful. So we kind of stuck to those trades</p> <p>8 that we saw the success on.</p> <p>9 Q So you did these trades by yourself?</p> <p>10 You came up with them by yourself after December</p> <p>11 of 2018?</p> <p>12 A Correct.</p> <p>13 Q So with respect to Mr. Gecas, do you</p> <p>14 know how he came up with the trades? I mean, you</p> <p>15 see -- you guys make trading recommendations in like</p> <p>16 corn, right?</p> <p>17 A Um-hmm.</p> <p>18 Q Yes?</p> <p>19 A Yes.</p> <p>20 Q And bonds, right?</p> <p>21 A Right.</p> <p>22 Q And hogs, right?</p> <p>23 A Right.</p> <p>24 Q And these commodities are not correlated</p> | <p style="text-align: right;">Page 208</p> <p>1 market about soybeans or hogs or whatever.</p> <p>2 Q And that's the technical analysis, right?</p> <p>3 A Technical is more just the charts and</p> <p>4 lines. The other would be he actually spoke on</p> <p>5 RFD-TV. So he would go through a lot of just what's</p> <p>6 going on in those markets, supply and demand. That</p> <p>7 to me is the economic analysis, not the technical</p> <p>8 analysis.</p> <p>9 Q And would Mr. Gecas tell you about the</p> <p>10 economic analysis?</p> <p>11 A I would read most of it too.</p> <p>12 Q Did this economic analysis, was it economic</p> <p>13 analysis that you performed?</p> <p>14 A No. It would be from different data</p> <p>15 sources, MarketWatch, Hightower Report, you know.</p> <p>16 There are a lot of different sources of information</p> <p>17 about what's going on in the grains.</p> <p>18 Q And did you source this information</p> <p>19 or did Mr. Gecas source it and provide it to you</p> <p>20 and you would read it?</p> <p>21 A We both could get it. We both had</p> <p>22 The Hightower Report, so we would both look at it.</p> <p>23 The MarketWatch we would both read.</p> <p>24 Q All right. So do you know what</p> |

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1 Mr. Gecas was looking for in terms of technical
 2 analysis?
 3 A I learned from him what data he's looking
 4 for.
 5 Q What did he tell you?
 6 A Looking at trends, looking at bottoms
 7 or support levels, resistance levels. If something
 8 breaks through, it's going to break through at a
 9 certain level. He showed me kind of on his charting
 10 of like here's how that works, here's how that
 11 moves across. I am not a big believer in technical
 12 analysis but the market is, so you have to
 13 understand because the market's going to behave
 14 that way.
 15 Q Got it. So did Long Leaf Trading
 16 use any algorithms or computer programs other than
 17 QuikStrike to come up with these trades?
 18 A No, we did not.
 19 Q So it sounds like your sources of
 20 information for arriving at these trades, as far
 21 as you knew from Mr. Gecas, were publicly available
 22 sort of news reports, is that right?
 23 A Publicly available news reports, yes.
 24 Q And also historical information on options,

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1 is that right?
 2 A Correct.
 3 Q What else?
 4 A Well, obviously the actual market
 5 information live streaming to us in our systems.
 6 Q Okay. What else?
 7 A I think that was the bulk of where it
 8 came from.
 9 Q All right.
 10 A There was always a rumor on the floor
 11 that you heard.
 12 Q Were you on the floor?
 13 A No. But he would -- when he did his
 14 TV spots, he would walk over to the CME floor. He
 15 knew a lot of people there.
 16 Q How frequently would Mr. Gecas do TV spots?
 17 A Once a week, twice a week.
 18 Q Do you know how far back Mr. Gecas
 19 would look when he was looking at market historical
 20 information?
 21 A About six months.
 22 Q And was that something Mr. Gecas told you?
 23 A Yeah.
 24 Q Was it typically six months for all

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1 of his trades?
 2 A Sometimes it would be six months.
 3 Sometimes it would be -- we would be trading
 4 around some type of an event, for example, a big
 5 crop report release, an FOMC meeting, something like
 6 that, which is not as much of a technical trade.
 7 Q So was that the case most of the time,
 8 that Long Leaf was recommending trades it had built
 9 around an event?
 10 A No.
 11 Q Just some of the time?
 12 A Yeah. Some events were more important
 13 than other events.
 14 Q Was there ever a month where
 15 Mr. Gecas couldn't come up with, you know, four
 16 recommendations for customers to do?
 17 A No.
 18 Q Any month where you couldn't come
 19 up with four recommendations for customers to do?
 20 A Oh, in the first few months I could
 21 come up with one or two. But as I've learned, yeah,
 22 I could easily come up with four or more.
 23 Q When you took over trading, what
 24 did you look at to decide what types of trades

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1 you wanted to recommend?
 2 A We were looking at low volatility
 3 assets, which used to be -- bonds used to be
 4 low volatility, not lately. Currencies, that
 5 was a specific trade you showed in No. 67. And
 6 then looking for volatility discrepancies across
 7 all the other markets.
 8 Q Well, I guess what I'm asking is
 9 specific sources. Like what news programs did
 10 you watch? Did you utilize a computer program?
 11 Things like that.
 12 A We still used QuikStrike quite a bit.
 13 We have Bloomberg on all the time, mostly because
 14 they have more about commodities. We still read
 15 MarketWatch. We have one guy who actually writes
 16 for MarketWatch. And then The Hightower Reports
 17 and kind of a streaming amount of news. There's
 18 Donald Trump's Twitter account.
 19 Q So when you were working on developing
 20 trades to recommend, you were looking at Bloomberg,
 21 MarketWatch, Hightower and sort of other public
 22 news, is that right?
 23 A Right.
 24 Q What else are you looking at?

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1 A We're actually looking more at the actual
 2 options structures.
 3 Q What do you mean by that?
 4 A So is the volatility in the front
 5 higher than the volatility in the back? That's
 6 an opportunity for a trade. Kind of what is the
 7 overall volatility of a certain asset versus its
 8 historical level. So we're looking more on the
 9 actual options structure to see if the structure's
 10 something that could be traded, then saying does
 11 the news support that type of trade.
 12 (Whereupon CFTC Exhibit No. 68 was
 13 marked for identification, MM.)
 14 Q All right. I want to hand you what
 15 I've marked as CFTC Exhibit 68. Let me know if
 16 you recognize this document, please.
 17 A Yes, I do.
 18 Q Can you tell me what it is, please.
 19 A It is Tim Evans sending me an email.
 20 Q And you're responding to Mr. Evans
 21 and you write, "We have four good positions on.
 22 We almost made an ES volatility swap but it was
 23 too expensive. It would have made a fortune. It
 24 has been nice not having to worry about the drop

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1 in the ES." Did you write that?
 2 A Yes.
 3 Q So what's going on here?
 4 A So he just -- he was actually in Mexico
 5 at the time, hadn't been following the markets.
 6 We had looked at doing an ES mini volatility swap.
 7 And, you know, backtesting it after that, it would
 8 have made a ton of money. But it was very expensive
 9 to get in, so we couldn't recommend it to our
 10 clients. It was just too expensive.
 11 Q So when you say too expensive, you know,
 12 what I want to know, if you'll tell me, please, is
 13 what role does the price of a trade have on whether
 14 you're going to recommend it?
 15 A It's more about the margin than the price.
 16 Q Tell me why, if you would, please.
 17 A You know, the -- so the price of
 18 the trade you saw in 67 is \$5,000. However,
 19 the margin is significantly lower than that. This
 20 trade, I don't remember the exact margin, but it
 21 was 3 to \$4,000 of margin to make that trade because
 22 of the ES mini being highly volatile. Anytime it's
 23 highly volatile the margins go significantly up.
 24 It makes it very hard to make those trades. Also,

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1 we don't trade the ES that often because it is
 2 very efficient. It's one of the most efficient
 3 markets out there in terms of trading, that you
 4 don't get much slack in being able to get in or
 5 out of the trades.
 6 Q So when you're building a trade
 7 to recommend at Long Leaf, you know, it sounds
 8 like it's built around it not taking up more than
 9 did you say 20 percent of the account for margin?
 10 A Right. The idea is to not overextend
 11 them into 100 percent of their account being in
 12 margin because even when you enter a trade, the
 13 margin's going to move all through the trade. So we
 14 usually take margin, multiply it times 150 percent
 15 and say that's how much margin you need to have.
 16 (Whereupon CFTC Exhibit No. 69 was
 17 marked for identification, MM.)
 18 Q All right. Mr. Donelson, I want to
 19 hand you what I've marked as CFTC Exhibit 69. And
 20 please look it over and tell me if you recognize
 21 the document.
 22 A Okay.
 23 Q Do you recognize Exhibit 69?
 24 A Yes.

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1 Q Can you tell me what it is, please.
 2 A An email chain.
 3 Q And this is an email chain that you were
 4 on, right?
 5 A Correct.
 6 Q All right. So I want to direct
 7 your attention to the middle of the first page of
 8 Exhibit 69. And you write on February 12, 2018 --
 9 well, it says James Donelson writes, "We may need
 10 to adjust the hogs again to 4. Below that number
 11 the trade doesn't cover the fees." Was that
 12 something you wrote?
 13 A Correct.
 14 Q So what's going on there, please.
 15 A I'm not sure which hog trade this
 16 is, but what we're saying is to go out with a
 17 trade adjustment to 4 and -- meaning we would
 18 sell at 4. If you sell below that, it's actually
 19 negative. You're going to end up negative.
 20 Q And that's because there are going to
 21 be fixed commissions, right?
 22 A Fees, not commissions, on the exit.
 23 Just the fees on trading that trade, if you went
 24 to 3 it would actually -- you would still -- it

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| <p style="text-align: right;">Page 217</p> <p>1 would cost you money to trade. 2 Q Got it. 3 A That's what we're talking about. It 4 happens. 5 MR. BURDEN: Can we take a quick 6 five-minute break, please. 7 MS. WING: That would be great. 8 MR. BURDEN: Off the record. Thank you. 9 (Whereupon a recess was taken from 10 3:17 p.m., to 3:30 p.m., after which 11 the following proceedings were had:) 12 MR. BURDEN: Let the record reflect 13 that neither I, nor any member of my team 14 had any substantive discussions with the 15 witness or his counsel. Isn't that right, 16 witness' counsel? 17 MS. WING: So stipulated. 18 THE WITNESS: Correct. 19 BY MR. BURDEN: 20 Q All right. Mr. Donelson, when you 21 started at Long Leaf Trading in December of 2017, 22 did you receive statements from Gain? 23 A Yes. 24 Q And those statements came to you</p> | <p style="text-align: right;">Page 219</p> <p>1 And if you look, Exhibit 70 has five attachments. 2 This is just one of the attachments and it's an 3 attachment titled -- I don't think the attachment 4 is titled, but it says Account Sequence Status 5 Report. Do you know what the Account Sequence 6 Status Report is? 7 A It's a lifetime report of P&L. 8 Q A lifetime report of P&L? 9 A I think. 10 Q All right. Was this a document that 11 you looked at while you were at Long Leaf Trading? 12 A I would look at it monthly. I wouldn't 13 look at it daily. 14 Q Okay. Did you get a special monthly 15 one or would you just look at the daily one once 16 a month? 17 A Just the last one of the month. It would 18 give you the same answer. 19 Q If you could, please, could you point 20 me -- let's just look at this first page in the 21 account sequence status report. Can you show me, 22 please, where the life-to-date P&L of the account 23 is, please. 24 A It would be -- that profit and loss</p> |
| <p style="text-align: right;">Page 218</p> <p>1 every day in your email inbox, correct? 2 A Yes. 3 Q All right. And so did those statements 4 show customer profit and loss over the life of the 5 accounts? 6 A No, they don't. 7 (Whereupon CFTC Exhibit No. 70 was 8 marked for identification, MM.) 9 Q All right. I want to hand you what I've 10 marked as CFTC 70. Do you recognize this document? 11 A This is the one -- yes. 12 Q All right. What's this document, please. 13 A I think it's the introducing broker report. 14 Q And how frequently did you receive this 15 at Long Leaf Trading? 16 A I think I received it daily, the daily 17 balancing reports. 18 Q All right. So what does the daily 19 balancing report show? 20 A Well, the daily balancing report was -- 21 really what I focused on was the Moneyline and 22 making sure that the cash and everything tied out. 23 Q All right. So let's take a look, if 24 we could, please, at the next page of Exhibit 70.</p> | <p style="text-align: right;">Page 220</p> <p>1 right there would be the middle column called LTD 2 Amounts -- the life-to-date profit and loss 4915 is 3 the profit and loss life to date. 4 Q All right. What's the DR stand for, 5 please. 6 A Debit. 7 Q So that LTD, what does LTD stand for, 8 please. 9 A Life to date. 10 Q All right. So Exhibit 70 indicates 11 that this particular account, Account [REDACTED] 3602, had a 12 life-to-date loss of \$4,915, is that correct? 13 A Correct. 14 Q All right. So you, in fact, did 15 receive -- and the account sequence statement would 16 show this every day for every Long Leaf Trading 17 account, the P&L -- 18 A Correct. 19 Q -- for the life of the account, correct? 20 A Correct. 21 Q All right. And you testified that 22 this was a document you looked at once a month, 23 right? 24 A Um-hmm.</p> |

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| <p style="text-align: right;">Page 221</p> <p>1 Q Yes?</p> <p>2 A Yes.</p> <p>3 Q All right. So do you remember the</p> <p>4 first time you saw the P&L for Long Leaf Trading</p> <p>5 accounts?</p> <p>6 A For you mean this report?</p> <p>7 Q Sure.</p> <p>8 A I saw it the first month I was there.</p> <p>9 Q Okay. And what did it reflect in</p> <p>10 terms of the P&L for Long Leaf Trading accounts?</p> <p>11 A That most of them were a loss. I had</p> <p>12 to figure out which ones were self-traders, though.</p> <p>13 Some of these are self-traders. These are all the</p> <p>14 accounts.</p> <p>15 Q Got it. So how did you figure out</p> <p>16 which traders were self-traders and which ones were</p> <p>17 traders who traded on a broker-assisted basis?</p> <p>18 A It would be based on the broker code.</p> <p>19 Q Got it. So when you first saw the</p> <p>20 P&L for Long Leaf Trading accounts, I think your</p> <p>21 testimony was that most of them were losers, is that</p> <p>22 right?</p> <p>23 A Correct.</p> <p>24 Q All right. What about the traders</p> | <p style="text-align: right;">Page 223</p> <p>1 would lose on all four trades. 2017 overall</p> <p>2 was not a good trading year for them. They had</p> <p>3 good months, they had bad months, but it wasn't</p> <p>4 consistent.</p> <p>5 Q Is it fair to say that in 2017</p> <p>6 substantially all customers lost money who followed</p> <p>7 Long Leaf's recommendations?</p> <p>8 A I wasn't personally there.</p> <p>9 Q Yeah. But you looked at the results,</p> <p>10 didn't you?</p> <p>11 A I would say yes.</p> <p>12 Q All right. What about 2016, did you</p> <p>13 go back and look at 2016 customer P&L for Long</p> <p>14 Leaf Trading?</p> <p>15 A I tried to. I got some months, but some</p> <p>16 months I couldn't get to the data.</p> <p>17 Q All right. How come you could get</p> <p>18 some and not others? I feel like you should be</p> <p>19 able to get them all.</p> <p>20 A The -- I might be mixing up years.</p> <p>21 I think I couldn't get all of '15. '16 I could</p> <p>22 get all of. But trying to bunch the trades together</p> <p>23 was a little more complicated.</p> <p>24 Q Got it. So for 2016 did customers</p> |
| <p style="text-align: right;">Page 222</p> <p>1 who did broker-assisted trading, were most of</p> <p>2 them losers when you first started at Long Leaf?</p> <p>3 A Yes.</p> <p>4 Q How much were they in the hole, if you</p> <p>5 can generalize?</p> <p>6 A I couldn't really generalize the total</p> <p>7 number.</p> <p>8 Q It varied depending on the customer,</p> <p>9 correct?</p> <p>10 A Varied on the customer. Varied on when</p> <p>11 they got there.</p> <p>12 Q But substantially all of them had lost</p> <p>13 money, correct?</p> <p>14 A Correct.</p> <p>15 Q So was this a surprise to you?</p> <p>16 A It was not -- it was a shock in terms</p> <p>17 of that every customer lost money. I expected some</p> <p>18 up, some down.</p> <p>19 Q So what did you do when you learned this?</p> <p>20 A I started looking at the trades</p> <p>21 and figuring out what drove them to this number.</p> <p>22 Q What drove them to those losses? Did you</p> <p>23 ever figure it out?</p> <p>24 A There were certain months where they</p> | <p style="text-align: right;">Page 224</p> <p>1 make money overall or lose money overall who traded</p> <p>2 at Long Leaf?</p> <p>3 A From what I saw, they were down but not</p> <p>4 down as much as they were in 2017.</p> <p>5 Q Got it. So what about 2015, was 2015</p> <p>6 a good trading year for Long Leaf Trading customers?</p> <p>7 A Like I said, I didn't have all the data</p> <p>8 for 2015.</p> <p>9 Q Where did you seek the data from?</p> <p>10 A From the Gain system I could download</p> <p>11 all trading data.</p> <p>12 Q So did you have trouble downloading some</p> <p>13 of that 2015 data?</p> <p>14 A They moved trading -- clearing firms</p> <p>15 sometime in 2015-2014, so they only had partial data</p> <p>16 in there.</p> <p>17 Q Okay. What did you do to try to get the</p> <p>18 missing data from 2015?</p> <p>19 A There was no way to get missing data from</p> <p>20 2015.</p> <p>21 Q But what about --</p> <p>22 A You had to go through the reports and</p> <p>23 pull it off --</p> <p>24 Q Well, did you talk to anybody from</p> |

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| <p style="text-align: right;">Page 225</p> <p>1 Gain and say can you help me get the missing data 2 from 2015? 3 A No, I did not. 4 Q Did you email anybody from Gain? 5 A No. 6 Q Who was Gain's previous clearing firm, 7 if you would, please, if you know. 8 A Gain's -- 9 Q You said they changed clearing firms -- 10 or did you mean Long Leaf Trading? 11 A Long Leaf Trading. 12 Q Who did Long Leaf Trading -- that 13 makes a lot more sense since Gain is, in fact, 14 a clearing firm. 15 MS. WING: Right. 16 A I was confused. 17 BY MR. BURDEN: 18 Q It's not mine to question -- well, 19 it is mine to question, but it's not mine to supply 20 the answer. So who did Long Leaf Trading use before 21 Gain, please. 22 A Well, they started with Open E Cry, 23 which was then acquired by Gain. So all that data 24 I think is in there. Before that it was Vision.</p> | <p style="text-align: right;">Page 227</p> <p>1 don't have all the data or I have the data but 2 I don't have the names of the accounts because they 3 have account names that I don't know. 4 Q I mean, what I want to know -- 5 you've got to know what I want to to know, right? 6 How did you fill in the blanks? What did you do? 7 A Basically I looked all the way from 8 2015 on specifically looking at the trading style 9 that they were doing at that time. 10 Q So setting aside -- 11 A Not what they did in the past. 12 Q So setting aside the trading style, 13 what did you do to complete your collection of 14 records from 2015? 15 A From 2015? 16 MS. WING: I'm going to object. 17 It's assuming that their records weren't 18 complete as it relates to the requirements 19 but -- 20 MR. BURDEN: I don't know that it matters 21 what the requirements are. 22 Q Mr. Donelson, what did you do to complete 23 the records from 2015? Did you go and request it 24 from some other party?</p> |
| <p style="text-align: right;">Page 226</p> <p>1 Q So did you ask Open E Cry for the 2015 2 data? 3 A Actually, once I saw the data going 4 into 2015, it did not appear that he was doing the 5 same trading at that point in time that he was doing 6 now. I didn't start seeing the options spreads and 7 that coming in heavily until late in 2015. 8 Q Got it. 9 A So before he was doing a future 10 and maybe an option or a short, you know, something 11 like that. It was definitely not the same type of 12 trading. 13 Q Okay. So when did the same type 14 of trading, this options spread trading, appear 15 in the 2015 data? 16 A I would say November-December 17 was what I recollect, but it was very late in 18 the year. 19 Q All right. Well, setting that aside, 20 you know, what did you do to obtain 2015 data from 21 Open E Cry or from Vision? 22 A Open E Cry was in the data. I may 23 be confused as to which year I had all the data 24 and which one I didn't. I think it's 2014 is I</p> | <p style="text-align: right;">Page 228</p> <p>1 A I'm not sure what records 2 you're talking about. The trading records were 3 electronic. I would have to physically look at how 4 far back those go. I thought they ended sometime 5 in 2015. It might have been 2014. I would have 6 to check. All of this, we went through all of the 7 customer applications and everything else. We had 8 those. We had looked at all the trade records at 9 the time of the acquisition -- or at the transfer 10 and made sure we had all those records. 11 Q Right. I'm not asking about 12 recordkeeping requirements. And I think maybe 13 an easier way to get to this is for me to ask you 14 how did Long Leaf Trading customers do in 2015? 15 A I didn't spend a lot of time looking at 16 it because they were doing a completely different 17 type of trade. 18 Q I understand. But how did they do? 19 A I -- honestly, I didn't spend a ton of 20 time looking at it. 21 Q Did they make money or did they lose money? 22 A I didn't spend a lot of time looking at it. 23 MS. WING: Do you know the answer? 24 THE WITNESS: No, I don't know the answer.</p> |

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| <p style="text-align: right;">Page 229</p> <p>1 BY MR. BURDEN:</p> <p>2 Q And it sounds before like maybe</p> <p>3 you only got some of the records for 2015, is that</p> <p>4 right? Did I understand you correctly?</p> <p>5 A It's one year and I can't remember if</p> <p>6 it's 2014 or 2015. I only have a -- and I would</p> <p>7 have to look back at my records because all of a</p> <p>8 sudden on one day there's a huge amount of money</p> <p>9 that comes into the system.</p> <p>10 Q Got it.</p> <p>11 A And I want to say that was in 2014,</p> <p>12 but I am not absolutely sure, though.</p> <p>13 Q Okay. So you probably don't know</p> <p>14 how customers at Long Leaf Trading did in 2014?</p> <p>15 A No.</p> <p>16 Q Okay. So I asked you how you reacted</p> <p>17 to learning that substantially all Long Leaf Trading</p> <p>18 customers had lost money, and you testified that</p> <p>19 you were shocked, right?</p> <p>20 A Right.</p> <p>21 Q So you went and you looked and you</p> <p>22 tried to ascertain why they lost money, right?</p> <p>23 A Correct.</p> <p>24 Q What else did you do?</p> | <p style="text-align: right;">Page 231</p> <p>1 A This would have been after the acquisition.</p> <p>2 Q Approximately when, please.</p> <p>3 A Oh, probably the 15th, 16th of December.</p> <p>4 Q And where did you talk to Mr. Evans?</p> <p>5 A Well, in our offices.</p> <p>6 Q Got it. What did you say to Mr. Evans?</p> <p>7 A I said I can't believe that you're</p> <p>8 showing this type of loss. I said why do we</p> <p>9 keep trading the same way if we keep getting the</p> <p>10 same results, and he was first a little irritated.</p> <p>11 Second, he said, look, it plays out over a long time</p> <p>12 period. It doesn't work any one month.</p> <p>13 Q How did you respond to that?</p> <p>14 A I said, well, it should work over</p> <p>15 a year or two, right? It shouldn't -- I understand</p> <p>16 that, yeah, every month might not be perfect, but</p> <p>17 you should be able to turn profitability on that.</p> <p>18 He had also significantly reduced option premiums --</p> <p>19 the commissions sometime in the mid part of 2017</p> <p>20 because they were at \$50. They were at 35 when</p> <p>21 I bought the firm.</p> <p>22 Q So in this conversation with Mr. Evans</p> <p>23 you said -- you pushed back against this claim that</p> <p>24 it works over time, right?</p> |
| <p style="text-align: right;">Page 230</p> <p>1 A I looked at the trades, you know. That</p> <p>2 was one part of the looking at the profitability</p> <p>3 is what were the trades. Yes, they were all short</p> <p>4 condors. Did a lot of research on my own looking</p> <p>5 at the short condor and when does it make sense to</p> <p>6 put it in the market and when doesn't it make sense</p> <p>7 to put it in the market and kind of -- we did the</p> <p>8 first batch, and I actually brought in a Series 3</p> <p>9 broker to help me determine those trades because</p> <p>10 I'm not used to those trades.</p> <p>11 Q What's that broker's name, please.</p> <p>12 A Jim Barrett.</p> <p>13 Q All right. You testified that you</p> <p>14 were shocked. What I want to know is did you talk</p> <p>15 to Tim Evans about this? Did you say, hey, I can't</p> <p>16 believe all your customers lost money?</p> <p>17 A Yeah, and Tim --</p> <p>18 Q Yeah, tell me about that.</p> <p>19 A Tim was -- they know the risks. They know</p> <p>20 what we're putting on.</p> <p>21 Q So when did you have this conversation</p> <p>22 with Mr. Evans? I want to know everything about</p> <p>23 confronting Mr. Evans with this outrageous</p> <p>24 revelation.</p> | <p style="text-align: right;">Page 232</p> <p>1 A Right.</p> <p>2 Q You said, hey, you know, if it works</p> <p>3 over time, it ought to work over the course of</p> <p>4 a year or two years, right?</p> <p>5 A Right.</p> <p>6 Q So how did he respond to that?</p> <p>7 A You know, he was talking about market</p> <p>8 conditions. He was talking about all these other</p> <p>9 things that to me didn't make sense. I'm not a</p> <p>10 confrontational person, so it's not like I was going</p> <p>11 to go, okay, we're out of here. We're going to have</p> <p>12 a fistfight out in the street. But I kept doing my</p> <p>13 research, kept looking at it, tried it for one more</p> <p>14 month and said, okay, this -- you know, this is not</p> <p>15 going to work. This is just not a trading strategy</p> <p>16 that can be consistently profitable. I had seen</p> <p>17 months where they won all four. I had seen months</p> <p>18 where they lost all four. It just didn't point to</p> <p>19 something that was going to be what I wanted the</p> <p>20 firm to do to make the customers money, which is you</p> <p>21 need something that has some level of consistency.</p> <p>22 At the end of the day you know you're going to lose</p> <p>23 trades. You just are. But on the other hand,</p> <p>24 you've got to have more winners than losers to</p> |

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1 make sure you cover it.
 2 Q So your view is that these credit spreads
 3 were not ever going to result in consistent profits
 4 for customers, correct?
 5 A In the proper market conditions they
 6 would. But to say that you can make the same trade
 7 for five years straight, hard to believe. Just my
 8 experience with prop traders is six months they've
 9 got to revamp their strategies, even if they were
 10 working really well.
 11 Q And you said all this to Mr. Evans?
 12 A Yeah.
 13 Q So what happens next?
 14 A Well, we go through the first month
 15 of trading. All four of them lose money. I said
 16 okay. We brought in another -- a friend of his who
 17 worked at another brokerage firm who has a lot of
 18 trading experience.
 19 Q Is this guy at Walsh Trading?
 20 A I don't know where he's at now.
 21 Q What was his --
 22 A Jim Barrett.
 23 Q Oh, Jim Barrett, okay.
 24 A Yeah, he wasn't at Walsh. He was at --

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1 he worked at another firm. I know that.
 2 Q Okay.
 3 A And he developed the four credit
 4 spreads for that month, all four of those out of
 5 the money.
 6 Q So what other conversations did you
 7 have with Mr. Evans about these dismal customer
 8 results?
 9 A I had a lot of discussions with him
 10 about how do you ever expect to make the money back
 11 for these clients. He's like, look, they know the
 12 risks that they're taking when they make the trades.
 13 They're making the trades. I said, well, you know,
 14 that's not the way I work, you know. I'm there to
 15 be making money for my clients, not losing money
 16 for my clients just because it pays me.
 17 Q How did he respond?
 18 A He was a little indignant about that.
 19 Q So were you guys --
 20 A Are we best friends? No.
 21 Q So, you know, it seems like you
 22 paid, what, a million and a half dollars for this
 23 business, correct?
 24 A Um-hmm.

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1 Q Yes?
 2 A Yes.
 3 Q And now you're the CEO of the business,
 4 right?
 5 A Correct.
 6 Q And a part of this business I think
 7 we discussed was the technical know-how, right?
 8 A Correct.
 9 Q And it was making these spread trades,
 10 right?
 11 A Correct.
 12 Q And Mr. Evans was going to show you how
 13 to do that, right?
 14 A Right.
 15 Q There's no computer program that does
 16 it. It's Mr. Evans who's going to show you how to
 17 do it, right?
 18 A Correct.
 19 Q Did he show you how to do it?
 20 A Yes.
 21 Q But you didn't want to do it, did you?
 22 A I saw how it was done and I could see
 23 places where it would work, but in the market sets
 24 that we had at that time I didn't see how it would

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1 be possible that that would be consistent.
 2 Q So it just seems to me like Mr. Evans sold
 3 you this company for a million and a half dollars to
 4 do these special trades that were their intellectual
 5 property and it seems like you learned within just a
 6 few weeks of arriving that the intellectual property
 7 is absolutely no good and customers sort of lose
 8 money across the board, right?
 9 A Correct.
 10 Q So, I mean, did you try to get your money
 11 back from him?
 12 A We are still looking into legal options.
 13 Q All right. Have you filed suit against
 14 Mr. Evans?
 15 A Not yet.
 16 Q Have you made a demand against Mr. Evans?
 17 A We have made demands against him
 18 to -- on remuneration for certain things that were
 19 guaranteed to us under that contract.
 20 Q Okay. So --
 21 A And he is not responding at all.
 22 Q Did you send a demand letter to Mr. Evans?
 23 A To his attorney, yes.
 24 Q Got it. And who's Mr. Evans' attorney?

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| <p style="text-align: right;">Page 237</p> <p>1 A Can she answer that question because</p> <p>2 I don't know his name.</p> <p>3 Q We can talk about it off the record.</p> <p>4 I don't want to put counsel on the spot.</p> <p>5 A It's Anthony somebody.</p> <p>6 MS. WING: It's a big Italian name.</p> <p>7 A It's two lawyers talking to each other.</p> <p>8 BY MR. BURDEN:</p> <p>9 Q Got it. So you have made a -- you've</p> <p>10 served a demand on Mr. Evans through his attorney,</p> <p>11 correct?</p> <p>12 A Correct. On, for example, any claim</p> <p>13 or something that came up prior to when I was in</p> <p>14 business.</p> <p>15 MS. WING: We'll stipulate that</p> <p>16 we served a demand on the indemnification</p> <p>17 provisions under the agreement, and we're</p> <p>18 still looking at getting it resolved with him.</p> <p>19 BY MR. BURDEN:</p> <p>20 Q So when did that demand go out?</p> <p>21 A January, December.</p> <p>22 Q Of? Sorry. So January of --</p> <p>23 A 2018.</p> <p>24 Q So January of 2018?</p> | <p style="text-align: right;">Page 239</p> <p>1 him vis-a-vis the purchase of the firm.</p> <p>2 Q All right. Have you made any other demands</p> <p>3 on Mr. Evans?</p> <p>4 MR. BURDEN: I know you're dying to</p> <p>5 answer, Ms. Wing.</p> <p>6 MS. WING: No. I mean, I think</p> <p>7 it's getting into some -- I want to caution</p> <p>8 my client about attorney-client privilege and</p> <p>9 conversations we may have about what we can do</p> <p>10 to seek recovery from Mr. Evans. But as I told</p> <p>11 you, part of the problem is finding Mr. Evans,</p> <p>12 who is no longer in the United States and has</p> <p>13 gone dark.</p> <p>14 BY MR. BURDEN:</p> <p>15 Q All right. Well, you know, I'm not going</p> <p>16 to ask you about any attorney-client communications.</p> <p>17 And as your counsel advised you, you know, in case</p> <p>18 you go wandering near that area or divulge them in</p> <p>19 the course of answering a question, you know, don't</p> <p>20 because that would be privileged. But Ms. Wing</p> <p>21 will jump in.</p> <p>22 So it sounds like you have one</p> <p>23 settlement demand out there currently to Mr. Evans</p> <p>24 for like \$30,000 for like a settlement with a</p> |
| <p style="text-align: right;">Page 238</p> <p>1 A Right.</p> <p>2 MS. STREIT: 2019?</p> <p>3 BY MR. BURDEN:</p> <p>4 Q Are you sure 2018?</p> <p>5 A No, no, no, no. December of 2018 or</p> <p>6 January of 2019, I'm sorry.</p> <p>7 Q All right. And what did you ask</p> <p>8 for here? Like I know you're saying, oh, it's</p> <p>9 something to do with the indemnification provisions</p> <p>10 in the, you know, the share purchase agreement or</p> <p>11 some other agreement. Like are you asking for your</p> <p>12 million and a half dollars back?</p> <p>13 A No.</p> <p>14 Q What are you asking for?</p> <p>15 A This is for a claim that was settled</p> <p>16 by -- with a client that was -- never traded under</p> <p>17 me and was a client prior to the acquisition.</p> <p>18 Q And how much are you asking for for this</p> <p>19 client settlement?</p> <p>20 A Thirty some thousand.</p> <p>21 Q So is that all you're asking for from</p> <p>22 Mr. Evans in this demand letter?</p> <p>23 A On that demand letter, yes. We're</p> <p>24 looking at the other avenues of how to go after</p> | <p style="text-align: right;">Page 240</p> <p>1 disgruntled customer, is that right?</p> <p>2 A Correct.</p> <p>3 Q And no other demands made on Mr. Evans?</p> <p>4 A Not at this time.</p> <p>5 Q Have you made any informal demands</p> <p>6 on Mr. Evans like, for example, saying, hey, you</p> <p>7 sold me a lemon, give me my million and a half back</p> <p>8 or I'm going to sue you?</p> <p>9 A I have not made that demand of him, no.</p> <p>10 Q So, you know, why not? I mean,</p> <p>11 you testified that you were shocked. It seems</p> <p>12 shocking. Like why did you not sort of serve a</p> <p>13 demand on him or otherwise ask for your money back</p> <p>14 ever?</p> <p>15 A I don't know that I can answer that,</p> <p>16 given our conversations.</p> <p>17 Q Yeah. I mean, I don't want to hear</p> <p>18 about attorney-client conversations. That stuff</p> <p>19 is privileged. But I'm asking you, and I have</p> <p>20 to believe that -- and if the answer is because</p> <p>21 my attorney told me not to, you know, that's</p> <p>22 privileged. But why wouldn't you do that?</p> <p>23 A We are looking at when to do it, not if</p> <p>24 to do it.</p> |

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| <p style="text-align: right;">Page 241</p> <p>1 Q But you haven't done it?</p> <p>2 A We have not done it as of yet.</p> <p>3 Q Got it.</p> <p>4 MR. PATRICK: So have you concluded</p> <p>5 after looking at the business, after taking</p> <p>6 it over in December of '17 and then you learned</p> <p>7 from the reports that you were reviewing that</p> <p>8 the customers lost --</p> <p>9 THE WITNESS: Money.</p> <p>10 MR. PATRICK: -- just consistently</p> <p>11 across the board lost money, did you conclude</p> <p>12 that Mr. Evans misrepresented the value of the</p> <p>13 firm and the profitability of the intellectual</p> <p>14 property that he was offering to you?</p> <p>15 THE WITNESS: I do.</p> <p>16 BY MR. BURDEN:</p> <p>17 Q So back to customer results. So Long</p> <p>18 Leaf Trading in January of 2018 changed the style of</p> <p>19 trades that were being recommended, is that correct?</p> <p>20 A Correct.</p> <p>21 Q All right. And the change was really</p> <p>22 to debit spreads, correct?</p> <p>23 A Debit spreads.</p> <p>24 Q All right. How have Long Leaf customers</p> | <p style="text-align: right;">Page 243</p> <p>1 had very big losses in, say, June and November-</p> <p>2 December.</p> <p>3 Q All right. What about January</p> <p>4 through May of 2018, were those losing months or</p> <p>5 winning months for Long Leaf clients?</p> <p>6 A January and February were the previous</p> <p>7 strategies. It's hard to get -- so when we talk</p> <p>8 about a January trade, it's made at the end of</p> <p>9 January so it shows up in February. The first month</p> <p>10 of this new trade I want to say we were breakeven</p> <p>11 or very close to breakeven on it. The next month</p> <p>12 we were down a little bit, but by the third month</p> <p>13 I think cumulative we were about breakeven or</p> <p>14 slightly up from the new trading style.</p> <p>15 Q All right. So between January of 2018 and</p> <p>16 January of 2019 how much did customers lose overall?</p> <p>17 A I don't know the exact number.</p> <p>18 Q Can you ballpark it?</p> <p>19 A It's above a half million. I don't know</p> <p>20 the exact number.</p> <p>21 Q Were there any individual customers</p> <p>22 who made money between January 2018 and January 2019</p> <p>23 in total net net, not just like month to month?</p> <p>24 A I think one did.</p> |
| <p style="text-align: right;">Page 242</p> <p>1 done from January of 2018 through January of 2019?</p> <p>2 A We had an unbelievably bad November.</p> <p>3 We had probably two really bad months where none</p> <p>4 of the spreads came in positively. They have lost</p> <p>5 money. Our trading wasn't consistent. That's why</p> <p>6 we've gone to a different strategy.</p> <p>7 Q All right. So between --</p> <p>8 A But we did have profitable months but not</p> <p>9 consistency that I was looking for.</p> <p>10 Q All right. So between January --</p> <p>11 I'm sorry. I know I asked you this, but when did</p> <p>12 the strategy change?</p> <p>13 A Which --</p> <p>14 Q Your own strategy, yeah.</p> <p>15 A It changed again in January of 2019.</p> <p>16 Q All right. So between January of 2018</p> <p>17 and January of 2019 what months were profitable for</p> <p>18 customers?</p> <p>19 A Let me think about this because</p> <p>20 we talk about it differently. It would have</p> <p>21 been -- you would have seen it in May where they</p> <p>22 were profitable. The July and August would have</p> <p>23 seen slight profitability, September would have</p> <p>24 had slight profitability, October. But then we</p> | <p style="text-align: right;">Page 244</p> <p>1 Q Okay.</p> <p>2 A I don't know -- I think that person had</p> <p>3 left by the time I started.</p> <p>4 Q Okay. So all the customers lost money</p> <p>5 while you were there between January of '18 and</p> <p>6 January of '19, is that right?</p> <p>7 A Oh, I'm sorry. I got the wrong periods.</p> <p>8 I was thinking '17 and '18. There was one that made</p> <p>9 money that left.</p> <p>10 Q During what period, please.</p> <p>11 A This would have been -- God, my years are</p> <p>12 all screwed up -- January '18 to '19.</p> <p>13 Q All right. So from January '18 to January</p> <p>14 '19 one person made money, right?</p> <p>15 A Right.</p> <p>16 Q And it's because they sort of got out</p> <p>17 while the getting was good?</p> <p>18 A They left for -- I don't remember what</p> <p>19 reason they left for, but they left.</p> <p>20 Q And all the other customers lost money,</p> <p>21 right?</p> <p>22 A Um-hmm, yes.</p> <p>23 Q All right. So you said January '19 you</p> <p>24 changed up your trading style to recommend these</p> |

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| <p style="text-align: right;">Page 245</p> <p>1 volatility swaps and also these gut strangles, 2 is that right? 3 A Correct. 4 Q All right. So January '19 through 5 the present, what are customer trading results 6 like for Long Leaf? 7 A We have customers that are up. I don't 8 know. The ones in the latest probably couple months 9 that have come on are up in total. We had a couple 10 bad trades in the first part of the new trading 11 strategy that's kind of drug it all down. However, 12 I think we've won 17 out of the last 20 trades, 13 the idea being profits are a couple hundred dollars 14 here, losses are less than a hundred. So the idea 15 is to keep it within a very kind of tight range. 16 We have one client that's up 17 percent. 17 Q So between January of 2019 and the 18 present with these new trading strategies did the 19 trading recommendations overall make money or lose 20 money net net? I understand customers get in or 21 out, but you track the performance of each 22 individual trade recommendation, correct? 23 A Right. 24 Q So January '19 through the present,</p> | <p style="text-align: right;">Page 247</p> <p>1 15 percent. 2 Q All right. So between January '19 and 3 the present, a customer who had a \$25,000 account 4 would be down 15 percent if they were in on all the 5 trades, is that right? 6 A A good generality, yeah. 7 MR. PATRICK: Would a \$25,000 account be 8 participating in a one-contract level typically 9 or would they usually be participating in a 10 two-contract level? 11 THE WITNESS: They're probably 12 participating in a two-contract level. 13 MR. PATRICK: So would that mean then 14 that rather than down 3500 -- 15 THE WITNESS: It would be 7, yeah. 16 MR. PATRICK: -- they would have been 17 down 7,000? 18 THE WITNESS: Right. 19 MR. PATRICK: But the percentage stays 20 roughly the same? 21 THE WITNESS: Yes. 22 BY MR. BURDEN: 23 Q All right. And is it fair to say 24 that you consistently received customer complaints</p> |
| <p style="text-align: right;">Page 246</p> <p>1 how are we doing on these new trades? 2 A We're down about 3500, and that 3 reflects -- there are two very specific trades 4 that lost big and then there were a couple others 5 that lost. But for the most part, you know, we're 6 on the right track moving forward. We're showing 7 good profitability right now. 8 Q So you said during the period January 9 2019 through the present, you said the trades are 10 down 3500, is that right? 11 A Yeah. 12 Q So is that like based on a sample 13 account size? Can you express that as a percentage 14 or is -- 15 A That's based on making each and 16 every trade, one trade of every single trade 17 recommendation. 18 Q Got it. 19 A With the worst entry and the worst exit. 20 That's how we look at it. 21 Q All right. So can you express that as 22 a percentage loss? Do you have like a -- 23 A You know, if you think of our normal 24 account size of being about 25,000, it would be</p> | <p style="text-align: right;">Page 248</p> <p>1 throughout your tenure at Long Leaf Trading? 2 A Yes. 3 Q What did you do about those customer 4 complaints? 5 A I would log them if I felt that 6 there was cause to consider a customer complaint. 7 There's -- a customer complaint and a customer 8 complaining, they're two different things. 9 Q How are they different? 10 A Customer complaint is asking for 11 a specific action for me to take, you know. I want 12 you to review my account. I want you to understand, 13 you know, what it is and make sure that everything 14 is aboveboard and that the trades were all made to 15 my approval. One client if you talk to him, he 16 would complain about Jeremy Ruth endlessly. 17 Q Is it fair to say that you received 18 regular complaints about clients losing money and 19 their dissatisfaction with losing money? 20 A I wouldn't say regularly, no. 21 (Whereupon CFTC Exhibit No. 71 was 22 marked for identification, MM.) 23 Q So I want to hand you what I've marked as 24 CFTC Exhibit 71, and it's a nice, big group exhibit.</p> |

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| <p style="text-align: right;">Page 249</p> <p>1 I want you to take a moment and look this over, 2 if you would, please, and tell me if you recognize 3 the documents therein. All right. Do you recognize 4 the documents in Exhibit 71, Mr. Donelson? 5 A Yes. 6 Q What are they, please. 7 A They're people concerned about losses 8 in their accounts. 9 Q All right. Would you characterize these 10 as customer complaints? 11 A I would not classify them to put them 12 in a complaint log. 13 Q Okay. So tell me about the complaint 14 log. Where do you keep that, please. 15 A I keep it on the One Drive system. 16 Q All right. I have not seen the complaint 17 log. Do you know if that has been produced to us? 18 A Yes, it should be in the documents 19 produced. 20 Q In the most recent production or in 21 an earlier production? 22 A In an earlier production. 23 Q Okay. Help me find it. What's the file 24 called?</p> | <p style="text-align: right;">Page 251</p> <p>1 I understand the technological problems, 2 but maybe it got caught up in that. I don't 3 know. But instead of wasting everybody's time, 4 we can reproduce a copy. 5 MR. BURDEN: Whichever one of us finds 6 it first, tell the other one. 7 MS. WING: Okay. 8 BY MR. BURDEN: 9 Q All right. So you'll see that 10 a lot of the emails in Exhibit 71 complaining 11 about customer losses were sent to brokers. Is that 12 an accurate characterization? 13 A Correct. 14 Q And the brokers then forwarded those 15 complaints to you, is that right? 16 A Correct. 17 Q What did you do with those complaints? 18 A I would go back to talk to the broker 19 about this specific client and what we were going 20 to do about it, but most of the time this would be 21 they would close the account and that -- they would 22 just make a request to close the account. I would 23 close the account. 24 Q Did you ever discipline any broker</p> |
| <p style="text-align: right;">Page 250</p> <p>1 A Complaint log. 2 Q Would it have been attached to an email? 3 A No, it would not have. It would have been 4 a standalone document. 5 MR. PATRICK: Was it a document or 6 a worksheet? 7 THE WITNESS: It's a document file. 8 MR. BURDEN: So, Ms. Wing, we can talk 9 about this later, but what I'll ask is -- 10 MS. WING: We produced it. We'll produce 11 another copy for you. 12 MR. BURDEN: No, no, you don't have to 13 produce another copy. It just seems like you 14 gave us all the emails, which I'm usually real 15 happy with. But sometimes when people do that, 16 they forget to look on like the C drive or 17 something. And if you were to tell me that 18 you did, then I'll just go find it. 19 MS. WING: It probably is easier 20 and will help the Commission if we give you 21 another copy of the complaint log separately. 22 If you'll recall, there was some problems in 23 the downloading of the documents through your 24 portal, which I'm not going to profess that</p> | <p style="text-align: right;">Page 252</p> <p>1 at Long Leaf Trading for their performance? 2 A I let people go because they weren't 3 bringing in revenue. But in terms of their 4 performance of their trade recommendations, no. 5 Q Because, I mean, it's not really their 6 fault, right? 7 A The only part I would discipline them 8 is if they didn't accurately do the trade tickets 9 and everything else. 10 Q Did that ever happen? 11 A Not to my knowledge. 12 Q Mr. Donelson, I want to hand you what 13 we've marked as CFTC Exhibit 4. Do you recognize 14 Exhibit 4, Mr. Donelson? 15 A Yes. 16 Q Can you tell me what it is, please. 17 A It's a draft document that myself and 18 Andrew Nelson were rewriting. 19 Q And were you rewriting it here in July 20 of 2018? 21 A We started rewriting it and then 22 we effectively just scrapped it as a general rule 23 because Time Means Money didn't make any sense. 24 Q Was this a script that brokers used</p> |

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1 when they talked to clients on the phone?
 2 A This was a training script.
 3 Q What do you mean by that?
 4 A So we would help them through this.
 5 So somebody new would come in. That's why it's
 6 deemed a junior broker. This is kind of to help
 7 them understand, well, you know, to practice some
 8 of the terms and that. The only piece that we used
 9 was really a bullet point piece that said here's the
 10 things you want to make sure you highlight.
 11 Q Did you provide -- I should ask who wrote
 12 this, the script in Exhibit 4?
 13 A I have no personal knowledge of who wrote
 14 it.
 15 Q Did you write it?
 16 A I did not write it, no. Most of this
 17 was written prior -- this was part of what was in
 18 the documents provided at acquisition.
 19 Q So you reviewed this script in connection
 20 with your acquisition of Long Leaf Trading?
 21 A Correct.
 22 Q All right. Was this a script that
 23 brokers at Long Leaf Trading used while you were
 24 there?

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1 A They didn't use the exact script
 2 that I know of.
 3 Q What did they use to be able to say --
 4 A To highlight the points, highlights,
 5 they would get this drilled into them by sales --
 6 in sales training before I got there. We've only
 7 added one new broker so --
 8 Q So is it your testimony that while
 9 you were at Long Leaf no broker used this script?
 10 A I can't say that for sure, that they
 11 never used the exact script. I know they didn't
 12 use this script because this one was revised. We
 13 didn't send it out.
 14 Q Did you provide any scripts to brokers
 15 at Long Leaf Trading?
 16 A We did as part of their training materials,
 17 yes.
 18 Q And did you produce that script to the
 19 CFTC?
 20 A No. It was not used for solicitation.
 21 It was only used for training.
 22 Q All right. And this training script would
 23 advise brokers of what to say, correct?
 24 A The highlighted points, yes.

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1 MR. BURDEN: All right. So we're
 2 going to ask that that script be produced.
 3 I think it's pretty obviously responsive to
 4 the subpoena. I can't imagine why you would
 5 have withheld it.
 6 MS. WING: Obviously there was a mis --
 7 it wasn't intentionally withheld, and I object
 8 to any reference to that. If there was not
 9 an understanding that it was covered by the
 10 subpoena, we would be happy to rectify that.
 11 MR. BURDEN: Yeah, please do.
 12 MS. WING: Just please watch the
 13 characterization.
 14 MR. BURDEN: I'm going to characterize
 15 things however I want.
 16 Q All right. Mr. Donelson, I want
 17 to direct your attention to page 3 of Exhibit 4,
 18 and it's actually the fourth page but it's marked
 19 page 3.
 20 A Um-hmm.
 21 Q Or is it? There we go. If you direct your
 22 attention, please, to page 4 of Exhibit 4.
 23 A Um-hmm.
 24 Q This heading, Introduce Time Decay,

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1 it says, "In addition to the seller's basic
 2 advantage, time decay is another driving force
 3 behind the fact that on average 76.5 percent of
 4 all options expire worthless if held to expiration.
 5 The Time Means Money program focuses on benefitting
 6 from time decay in its trading strategies."
 7 Is this something that you heard
 8 brokers say to customers on the phone, that --
 9 A I've heard it, yeah.
 10 Q Okay. And did you discipline brokers
 11 for that? Is that a thing they were allowed to
 12 say?
 13 A It is allowed to say. The 76.5 is based
 14 on a CME study.
 15 Q Yeah. So have you read that study?
 16 A Yes.
 17 Q During what time period does that study
 18 relate to?
 19 A The late '90s.
 20 Q Yeah. So have you reviewed any updated
 21 studies with respect to options expiring worthless?
 22 A There haven't been any on the CME options.
 23 Q Have you done any studies like that?
 24 A No.

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1 Q So I want to take a look at this
 2 76.5 percent figure. Does 76.5 percent of Long
 3 Leaf Trading's recommendations result in profits
 4 to customers?
 5 A That's not what this says.
 6 Q I know, but I'm asking you.
 7 A No, it doesn't.
 8 Q All right. For Long Leaf Trading's
 9 recommendations with respect to option sales,
 10 does 76.5 percent of those recommendations expire
 11 worthless? Is that what happened?
 12 A I don't know the exact number, no.
 13 Q Do you think it's higher or lower
 14 than 76.5 percent of the recommended option sales
 15 expiring worthless?
 16 A It's probably in about that range,
 17 76-1/2. That's a guess on my part. I never looked
 18 at it that way.
 19 Q Did you look to see what percentage
 20 of recommended option sales at Long Leaf Trading
 21 expire worthless?
 22 A I did not look at the exact number, no.
 23 Q All right. So let's take a look, if
 24 we could, please, at pages 5 and 6 of Exhibit 4.

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1 I'm going to start at the bottom of 5 and then we're
 2 going to move to 6. So it says Introduce the Three
 3 Principles. It says, "In 2009 Long Leaf was founded
 4 on three principles," and the third principle is --
 5 and this is on page 6 -- "We should provide our
 6 clients a strong return on their investment."
 7 Is this something that you heard
 8 brokers say to customers?
 9 A Yes.
 10 Q All right. What clients of Long
 11 Leaf Trading obtained a strong return on their
 12 investment?
 13 A None.
 14 Q All right. So did you discipline
 15 brokers for saying that? Did you tell them not
 16 to say that?
 17 A We were -- we changed this whole
 18 layout over the last year to try to get rid of
 19 some of these issues.
 20 Q Yeah, but you testified that you
 21 heard brokers say to clients we provide our clients
 22 a strong return on their investment. You heard
 23 that, right?
 24 A Yeah, but that's based -- the principle.

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1 Q No, I understand. So did you ever
 2 say to these brokers don't say that to clients?
 3 A Yeah, I have said that to brokers.
 4 Q Who did you say that to?
 5 A All of our new brokers that were
 6 doing the -- this is what we call a demo, you
 7 know, for opening up and saying, you know, focus
 8 them on this is where we're headed. This is the
 9 things that we're doing. And the push-back on any
 10 one from a customer standpoint in terms of return
 11 is like we're working on that. We've got -- you
 12 know, we've worked on these types of things. We've
 13 had good months. We've got bad months. We're
 14 working towards profitability on a consistent basis.
 15 Q Wait. So your testimony is you told
 16 customers -- sorry.
 17 A No, I didn't tell customers.
 18 Q You told brokers to tell customers that
 19 we don't make money every month?
 20 A No, that's not accurate of what I'm
 21 trying to say. One push-back, there's another
 22 piece of this, which is any response like what do
 23 you do when somebody asks you a question, right?
 24 And that was, look -- you know, one question is,

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1 well, how have your returns been this year.
 2 I said, you know, here's what we have to say.
 3 We have to say we've had good months. We've
 4 had some tough months. We're working on being
 5 consistent and we're starting to see some of that
 6 consistency when we went through the summer where
 7 we were making the types of returns we expected
 8 to make.
 9 Q So your testimony is that if
 10 a customer asked what were your returns for the
 11 year, there was an answer the broker was supposed
 12 to give them, right?
 13 A Correct.
 14 Q And that answer was something
 15 to the effect of we've had good months and we've
 16 had bad months, is that right?
 17 A Right.
 18 Q Did you instruct brokers to tell
 19 customers that, in fact, substantially every
 20 customer of Long Leaf Trading had lost money?
 21 A No, I did not.
 22 Q Why not?
 23 A I was working off of the trades
 24 that we were doing at that time, not the previous

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1 trading strategies.
 2 Q But that's not true, is it? If
 3 somebody asks for trading results for the past
 4 year and you tell them you're working on it, that
 5 doesn't really answer their question, does it?
 6 A Well, if you're talking about
 7 trading results on one strategy versus another,
 8 I can tell you what was happening on the previous
 9 strategy. That's why we changed it.
 10 Q But it sounds like you didn't let
 11 the brokers tell customers what was happening on
 12 the previous trades.
 13 A The previous trades we weren't using
 14 anymore.
 15 Q Yeah, but customers --
 16 A They were not relative anymore.
 17 Q We'll get to that in a minute. So
 18 let's look at the rest of page 6 here. So this
 19 training script says, "These three principles are
 20 what we have built our company upon and everything
 21 that we do since our inception. At Long Leaf we
 22 measure our success by our clients' success. There
 23 is no way we would have the ability to work with
 24 hundreds of clients month after month for over

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1 nine years and oversee millions of dollars
 2 if we weren't being profitable for them." Did you
 3 hear brokers say this to customers?
 4 A I don't remember hearing anybody say that.
 5 Q Really?
 6 A I really don't.
 7 Q So let's talk about Long Leaf's offices.
 8 What do Long Leaf's offices look like?
 9 A They're a little bigger than this room.
 10 Q So how big is that?
 11 A About 800 square feet.
 12 Q All right. And are there walls in
 13 the office that separate you from the brokers?
 14 A No.
 15 Q How many chairs are in the office?
 16 A At one time there were about 15 to 20.
 17 Q Where are you in relation to the brokers?
 18 A I'm back against the wall this way.
 19 They're all that way.
 20 Q All right. So they're in front of you,
 21 right?
 22 A Correct.
 23 Q Are the brokers facing you or are their
 24 backs to you?

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1 A It's both.
 2 Q So how many brokers do you have in the
 3 office at a time when you're there?
 4 A Right now only three.
 5 Q What was the most you ever had in the
 6 office, please.
 7 A Twelve.
 8 Q So did you ever listen to brokers'
 9 telephone calls?
 10 A I listened to some, yes.
 11 Q Okay. And you never heard them
 12 say there's no way we would have been able to
 13 work with hundreds of clients month after month
 14 if we weren't being profitable for them? You never
 15 heard that?
 16 A I never heard those exact words, no.
 17 Q Did you ever hear something to that effect?
 18 A I don't remember hearing it.
 19 Q Did you ever hear any brokers say
 20 to customers rent here at the Board of Trade
 21 is expensive. We wouldn't be able to pay it or
 22 keep the lights on if we weren't making money for
 23 customers. Did you ever hear anything like that?
 24 A No. They wouldn't know what the cost

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1 of the rent was.
 2 Q So did you ever go back and review
 3 phone calls with brokers? Did you ever listen to
 4 recorded phone calls?
 5 A I listened to not every single one of them,
 6 but I listened to them.
 7 Q How many phone calls with brokers
 8 would you say you listened to recordings of?
 9 A Probably 20 or 30 a month.
 10 Q How did you decide which phone calls
 11 to listen to?
 12 A Usually start with the younger
 13 brokers in terms of making sure that they're not
 14 stumbling over everything and saying some things
 15 that really don't need to be said. And then in
 16 terms of the closers and that, I would listen to
 17 a couple of theirs a month.
 18 Q All right. Did you ever listen to any
 19 of Mr. Nelson's calls?
 20 A Yes.
 21 Q Did you ever listen to any of Mr. Gecas'
 22 calls?
 23 A Yes.
 24 Q How many of Mr. Nelson's calls would

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1 you say you listened to?
 2 A Twenty or thirty. He was also very
 3 close to where I was at, so I could hear him much
 4 more prominently than anybody else. Both him and
 5 Mr. Gecas were like the closest people to me, so
 6 I heard a lot of their conversations.
 7 Q So how many of Mr. Gecas' calls would
 8 you say you listened to?
 9 A Probably the same amount, 20 or 30.
 10 Q And you said Mr. Gecas was very close to
 11 you as well?
 12 A Yeah, he was probably from maybe here
 13 to there.
 14 Q Would it surprise you to learn that
 15 we have listened to recordings of Mr. Gecas' and
 16 Mr. Nelson's calls. And, in fact, they say this
 17 dozens and dozens of times, that there's no way we'd
 18 have the ability to work with hundreds of clients
 19 if we weren't being profitable for them. Would that
 20 be a surprise to you?
 21 A Yes, it would.
 22 Q All right. Let's keep looking, if we
 23 could, please, at page 6 of Exhibit 4. So there's
 24 a piece on NFA company record here. And it says,

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1 "We are extremely data oriented when it comes to
 2 adhering to all rules and regulations set forth by
 3 the National Futures Association in order to protect
 4 you. This is the reason over the last nine years
 5 and hundreds of clients later we have maintained
 6 and kept a 100 percent clean track record with our
 7 regulatory body, the National Futures Association,
 8 relating to servicing customer accounts. The NFA
 9 runs legal investigations on every single complaint
 10 they receive, regardless of merit. As you can see
 11 here, we have never had a complaint filed against
 12 our firm by any of our clients."
 13 Is this something you heard brokers
 14 say on the phone to customers?
 15 A Yes.
 16 Q All right. Are you aware of any complaints
 17 filed by customers with the NFA?
 18 A I only know of one.
 19 Q And when did you learn of that complaint?
 20 A That was July or August.
 21 Q Of what year, please.
 22 A 2018.
 23 Q All right.
 24 MS. WING: I want to -- hold on, please.

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1 (Discussion off the record.)
 2 BY MR. BURDEN:
 3 Q Do you have additional testimony to
 4 clarify your previous testimony?
 5 A No. It was a specific person,
 6 Priscilla Lamar. And the exact dates, I could
 7 tell you it dragged on for a long period of time.
 8 Q So you're aware that Priscilla filed
 9 a complaint with NFA, correct?
 10 A Correct.
 11 Q And when did you become aware of that,
 12 please.
 13 A I would say sometime in June.
 14 Q Of what year, please.
 15 A 2018.
 16 (Discussion off the record.)
 17 MR. BURDEN: What are you guys up to
 18 over there? I don't normally allow this,
 19 but I get a benign feeling on it.
 20 MS. WING: I don't know if it was
 21 an NFA complaint. There was a demand letter,
 22 okay?
 23 MR. BURDEN: Got it.
 24 MS. WING: So I want his testimony to

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1 be accurate. And, unfortunately, I don't recall
 2 whether or not a complaint was actually filed or
 3 the issue was resolved prior to any complaint
 4 being filed.
 5 MR. BURDEN: Got it.
 6 MS. WING: And I believe it's prior to
 7 any complaint being filed.
 8 BY MR. BURDEN:
 9 Q Well, setting aside whatever Ms. Lamar
 10 did, are you aware of any other complaints filed
 11 with the NFA by customers of Long Leaf Trading?
 12 A This is what I -- the nomenclature,
 13 I'm not sure. There was another man, Mr. Fischer
 14 complained to the NFA, but I don't know if he filed
 15 a formal complaint.
 16 Q All right. Anybody else?
 17 A Nobody else that I know of.
 18 Q So when did you learn of Mr. Fischer's
 19 complaining to the NFA?
 20 A I think it was about the same time, in
 21 June.
 22 Q June of '18?
 23 A Yeah. He made one trade and that was it.
 24 Q All right. Do you know if customers

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1 complain to the NFA, are those forwarded on to
 2 the firm? Like if a customer had made a complaint
 3 to the NFA, would you know about it?
 4 A I would assume so, yes.
 5 Q Why would you assume that?
 6 A Because they would -- the NFA would need
 7 to notify me.
 8 Q Why do you think that? I'm not disagreeing
 9 with you, but why do you think that?
 10 A So that we can resolve it.
 11 Q Did NFA notify you of the Chris Fischer
 12 complaint?
 13 A Yes.
 14 Q Okay. That's how you learned of it?
 15 A Yes.
 16 Q Did you ever ask NFA if there were
 17 complaints pending against Long Leaf Trading?
 18 A Yes, because I asked when the Chris
 19 Fischer thing came up. I said is there -- this
 20 is fairly new to me and I'm like if it gets -- the
 21 NFA gets a complaint, is that something that's going
 22 to come to me so I have knowledge of that complaint
 23 or what.
 24 Q And who did you talk to at NFA about

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1 that?
 2 A This would have been Kyle Wood.
 3 Q And you asked Mr. Wood if there were
 4 other complaints?
 5 A Yeah.
 6 Q And what did he tell you?
 7 A He said there were none, I think.
 8 Q You think?
 9 A I don't know if it was Kyle Wood.
 10 That's why I question it. This was part of a --
 11 this was all during the same time that the NFA
 12 were doing a review and a lot of things were going
 13 on. So I might be a little off on who I talked
 14 to or -- but I specifically never heard that there
 15 was another complaint.
 16 Q So you asked and somebody from the
 17 NFA told you, no, no other complaints, is that your
 18 testimony?
 19 A Yes.
 20 Q And you can't remember who told you that?
 21 A It could have been Shane O'Mara.
 22 It could have been Kyle Wood. It could have been
 23 the people who called me with the actual complaint,
 24 which is another division altogether.

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1 Q What were their names?
 2 A I don't know. I can't remember.
 3 Q All right. Prior to June of 2018 did
 4 you ever inquire of the NFA if there were pending
 5 complaints against Long Leaf Trading?
 6 A No.
 7 Q After the Chris Fischer complaint,
 8 after you learned of it anyway, did you advise
 9 the brokers to stop telling customers that there
 10 never has been a complaint filed?
 11 A No, I -- this is where some of my --
 12 to me it was was it a customer complaint or is --
 13 or are they notified. I didn't understand the whole
 14 process of the --
 15 MS. WING: I think it would be helpful
 16 to tell them what Mr. Fischer's complaint was
 17 about.
 18 MR. BURDEN: That's not my question
 19 and I'm not interested in it.
 20 Q Mr. Donelson, after you learned
 21 of the Mr. Fischer complaint, your testimony is
 22 that in fact you did not advise the brokers to stop
 23 telling clients there were no complaints with the
 24 NFA.

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1 A Correct.
 2 Q Why not, though? You had learned that
 3 there was one.
 4 A My understanding is he made a complaint.
 5 There was nothing there. It was over and it was
 6 done. So anybody can make a complaint to the NFA.
 7 The question is is did they find anything wrong
 8 about what we were doing, and the answer was no.
 9 Q Was that the result of Mr. Fischer's
 10 complaint? Was it resolved in Long Leaf's favor?
 11 A It was -- he said that we wouldn't
 12 give his money back, and we kept telling him there
 13 was an open position that we couldn't get out of.
 14 He complained to the NFA that we were withholding
 15 his money. By the time he had made the complaint we
 16 had already sent his money back because the position
 17 closed and paid for the wire fee, as we had told
 18 him we would do.
 19 Q So did that sort of resolve the complaint
 20 from the NFA --
 21 A Yes.
 22 Q -- perspective? Did they like send
 23 you something that said this complaint is withdrawn
 24 or anything to that effect?

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1 A No, not that I know of.
 2 Q Did you advise customers that you had
 3 received complaints directly from customers about
 4 losses in their account like we saw in Exhibit 71?
 5 A I did not, no.
 6 Q Did any of the brokers do that?
 7 A I don't think so.
 8 MS. WING: It could be considered
 9 a violation to do so.
 10 BY MR. BURDEN:
 11 Q All right. Mr. Donelson, I want
 12 to hand you what we've marked as CFTC Exhibit 5.
 13 Do you recognize this document, please.
 14 A Yes.
 15 Q Can you tell me what it is, please.
 16 A It is a training tool to help people
 17 get past customer objections.
 18 Q Got it. And who wrote this, please.
 19 A I assume Tim Evans wrote it.
 20 Q And you sent it to Mr. Nelson, is that
 21 correct?
 22 A We -- I sent it to him as one of those
 23 should we be using this trading tool or not, but
 24 I had to scan it because it was all PDF.

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1 Q So this training tool, it's a file titled
 2 Rebuttals, is that right?
 3 A Correct.
 4 Q So do you have an understanding
 5 of what that means? Why is rebuttals the title?
 6 A These were designed for -- as people
 7 have objections, well, how do you answer certain
 8 types of -- I can't look at you with those glasses
 9 on -- how you would answer certain things.
 10 Q All right. And was this --
 11 A It was part of the training around the
 12 sales style.
 13 Q Got it. And whose training was this?
 14 A This would be brokers' training, sales
 15 managers' training.
 16 Q Got it. So the brokers that were
 17 working while you were CEO at Long Leaf Trading,
 18 was this a training tool that they used?
 19 A Some used it, some didn't. We kind
 20 of scrapped most of it by mid 2018.
 21 Q And when you say "we" scrapped it by
 22 mid 2018 --
 23 A Across the board. Across the board.
 24 Q Across the board?

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1 A Yeah. Just basically saying -- there's
 2 certain things in here that are useful in terms
 3 of people asking questions. Some of them I think
 4 are too argumentative, so we kept -- the rebuttals
 5 were there. It was just up to the individual broker
 6 focusing on the ones that were specifically around
 7 the amount of time it would take somebody or
 8 something like that. Those are kind of -- one
 9 of the normal objections that somebody has going
 10 into any program.
 11 Q All right. Was this rebuttals document
 12 in Exhibit 5, was this a document that the brokers
 13 had?
 14 A Some of them would have it and some
 15 wouldn't. I think it was more for the senior
 16 brokers than it was for the junior brokers.
 17 Q So same question with respect to
 18 Exhibit 4. With respect to Exhibit 4, was that
 19 a document that brokers at Long Leaf Trading had
 20 when you were there?
 21 A Yes.
 22 Q And was it something -- and this
 23 is Exhibit 4 again -- was it something that those
 24 brokers used?

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1 A Some used it, some didn't.
 2 Q All right. Same question with respect to
 3 Exhibit 5. Was this rebuttals document a document
 4 that some brokers used?
 5 A Wasn't that just the question you asked me?
 6 Q But it was Exhibit 4. This is Exhibit 5.
 7 MS. WING: Does that change your testimony?
 8 A Okay. Could you repeat the question
 9 before that then?
 10 BY MR. BURDEN:
 11 Q Yeah, sure. So Exhibit 4 was our demo
 12 junior broker revised JD script, right?
 13 A Yeah, all the junior brokers would have
 14 that.
 15 Q Got it. So Exhibit 4, while you were
 16 CEO all the junior brokers had this demo junior
 17 broker revised --
 18 A Not this actual one because we
 19 never released this one. This was Andrew and
 20 I editing it back and forth to the point where I
 21 just said I don't like it at all. Rewrite the whole
 22 thing. Start from scratch.
 23 Q So your testimony is that the
 24 brokers didn't have this demo junior broker revised

| | |
|---|--|
| <p style="text-align: right;">Page 277</p> <p>1 JD?</p> <p>2 A Not this revision, no.</p> <p>3 Q Got it. Did they have an earlier version</p> <p>4 of it?</p> <p>5 A Most likely, yes.</p> <p>6 Q Okay. Did the earlier version</p> <p>7 have these same representations in it about</p> <p>8 the 76.5 percent of options expire worthless?</p> <p>9 Did it say that?</p> <p>10 A Yeah, I think so.</p> <p>11 Q So the earlier version that the</p> <p>12 brokers had, did it contain this bit about how</p> <p>13 we should provide our clients a strong return on</p> <p>14 their investment? Did it have that?</p> <p>15 A Yes.</p> <p>16 Q So did the earlier version of</p> <p>17 Exhibit 4 that you testified the brokers have,</p> <p>18 did it say there's no way we, meaning Long Leaf,</p> <p>19 would have the ability to work with hundreds of</p> <p>20 clients month after month for over nine years and</p> <p>21 oversee millions of dollars if it weren't being</p> <p>22 profitable for them? Did the earlier version of</p> <p>23 this script have that statement in it?</p> <p>24 A I'm not sure about that.</p> | <p style="text-align: right;">Page 279</p> <p>1 of this script without that portion in it about</p> <p>2 the profitability?</p> <p>3 A Like I said, we started revising it and</p> <p>4 then we completely wiped it out, redid everything.</p> <p>5 So it's not in the new script at all.</p> <p>6 Q So --</p> <p>7 A And there is no new script. It's just</p> <p>8 talking points that's all been run through the NFA,</p> <p>9 brand new presentation, brand new everything.</p> <p>10 Q And so your testimony is you never</p> <p>11 heard brokers during your time at Long Leaf telling</p> <p>12 customers that Long Leaf wouldn't have been able</p> <p>13 to work with hundreds of clients month after month</p> <p>14 if Long Leaf wasn't being profitable for them?</p> <p>15 Your testimony is you never heard that?</p> <p>16 A I heard it and I had talked with people</p> <p>17 about not using it, but I didn't consistently hear</p> <p>18 it on every single phone call, no.</p> <p>19 Q Who did you talk to and tell them not</p> <p>20 to make that representation about profitability?</p> <p>21 A There was one gentleman, Gunther.</p> <p>22 Q What did you tell Mr. Gunther?</p> <p>23 A I said do not use that statement at all.</p> <p>24 Q All right. And what did he say?</p> |
| <p style="text-align: right;">Page 278</p> <p>1 Q All right. So it sounds like you</p> <p>2 looked. You saw this earlier version of Exhibit 4,</p> <p>3 this earlier script, is that right?</p> <p>4 A Yes.</p> <p>5 Q How did you come to see it?</p> <p>6 A I think when I saw it the first --</p> <p>7 when I took over the firm and looked through</p> <p>8 all the training materials. They basically gave</p> <p>9 me a data dump of all the training materials they</p> <p>10 had. Some of it was video. Some of it was other</p> <p>11 things.</p> <p>12 Q Well, did you sort of take umbrage</p> <p>13 with that statement? I mean, I think it's fair</p> <p>14 to say that Long Leaf Trading was not profitable</p> <p>15 for customers, right?</p> <p>16 A Correct.</p> <p>17 Q So your testimony is that these</p> <p>18 brokers had this script and the script said that</p> <p>19 Long Leaf Trading was profitable for customers,</p> <p>20 right?</p> <p>21 A I thought we took it out of the</p> <p>22 script. I would have to check if that was in the</p> <p>23 script or not.</p> <p>24 Q So where am I going to see a version</p> | <p style="text-align: right;">Page 280</p> <p>1 A He said yes, okay.</p> <p>2 Q What did you do to make sure that</p> <p>3 Mr. Gunther didn't continue to use that statement</p> <p>4 about profitability?</p> <p>5 A Once again, he was one of those</p> <p>6 people very close to my earshot, so I could do</p> <p>7 that and then I would also review any phone calls</p> <p>8 that he was making. The other part would be given</p> <p>9 that he was an opener, he may only talk to 10 or</p> <p>10 12 people a day at most, and maybe not even for</p> <p>11 that long.</p> <p>12 Q What other brokers did you tell not</p> <p>13 to make this representation about profitability?</p> <p>14 A Alex Stemper, who still works for us.</p> <p>15 Q All right. What other brokers?</p> <p>16 A It was mostly -- Sean Mooney, who no</p> <p>17 longer works there. Those were our main openers</p> <p>18 because this is more of an opening script than it</p> <p>19 is a -- or something to get the thing started, not</p> <p>20 necessarily the closing side of it.</p> <p>21 Q All right. Well, openers or closers</p> <p>22 aside, what other brokers did you tell to not</p> <p>23 represent to customers that Long Leaf was trading</p> <p>24 profitably?</p> |

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|--|---|
| <p style="text-align: right;">Page 281</p> <p>1 A I had talked to Scott and I had talked 2 to Andrew both about not -- you know, how we want 3 to describe what we do and how we've got to be -- 4 our compliance to be -- this is not something we 5 should be saying. Most of them had no idea long 6 term because most of them had just been there 7 since October. 8 Q So your testimony is that you told 9 Mr. Nelson not to tell customers that -- 10 A You can easily say that -- I told him 11 that, yes, you can say that people have been with 12 us for a period of time, you know, but to represent 13 that we're making everybody money is not accurate. 14 Q Did you tell Mr. Nelson not to make 15 this representation in the demo training script, 16 that there's no way we would have been able to 17 work with hundreds of clients if we weren't being 18 profitable for them -- 19 A Like I said -- 20 Q You've got to -- please, you've got to 21 wait for me to finish. You're getting excited. 22 A We were just going through and editing 23 this document and we came to the conclusion early 24 on, almost a day or so after I edited it. And</p> | <p style="text-align: right;">Page 283</p> <p>1 Mr. Gecas. Did you tell Mr. Gecas, hey, Mr. Gecas, 2 don't -- you can't say this bit in the demo training 3 script about not being able to work with customers 4 if we weren't being profitable? Did you ever say 5 that to Mr. Gecas? 6 A I believe I did, yeah. 7 Q And when did you say that, please. 8 A Probably about the same time, in April. 9 Q Of 2018? 10 A 2018, right. 11 Q And what did you do to ensure that 12 Mr. Gecas didn't make that representation? 13 A I would check random voicemails. 14 I mean, there's a lot of -- not voicemails, voice 15 recordings. 16 Q But you could also hear Mr. Gecas, right? 17 A Sometimes. Sometimes yes, sometimes 18 no. I mean, it would depend on -- you don't know 19 what the other side of that conversation is so -- 20 but that would require me to be in the office 21 100 percent of the time too. 22 Q So did you hear Mr. Gecas or Mr. Nelson 23 disobeying instructions and telling customers that 24 Long Leaf Trading was being profitable for them?</p> |
| <p style="text-align: right;">Page 282</p> <p>1 I said, you know what, this is just -- let's start 2 from scratch. It was -- this was never released 3 to anyone because we were just working on how do 4 we want this to go and we said we can either try 5 to fix this, throw it all away and start the way 6 we want to do it. 7 Q Yeah, but that's not my question. 8 Did you ever tell Mr. Nelson not to tell customers 9 this line we see in Exhibit 4, there's no way we 10 would have the ability to work with hundreds of 11 clients if we weren't being profitable for them? 12 Did you ever say, Mr. Nelson, don't say that? 13 A Yes, I've said that to him. 14 Q When? The earliest really. 15 A Well, when he was actually on sales 16 calls. That would have been April, sometime around 17 there. 18 Q And what did you do to make sure 19 Mr. Nelson didn't continue to say this to customers? 20 A Well, one, he was in earshot. The other 21 is I would check, you know, I would check randomly 22 phone calls that he made and I would not hear him 23 say those exact words. 24 Q All right. So same with respect to</p> | <p style="text-align: right;">Page 284</p> <p>1 A I don't remember hearing them, no. 2 Q So you think they did what you said, 3 as far as you know? 4 A As far as I know. 5 Q All right. So let's go back, if we could, 6 please, to Exhibit 5, which is this rebuttals 7 document. I want to direct your attention to 8 page 3 and it's the fourth page of the document. 9 It's page 3 of the -- sorry. It's the -- I want 10 to direct your attention to the fourth page of 11 Exhibit 5, which is the third page of the rebuttals 12 document. 13 All right. And do you see where it 14 says Closing off Accountability/Trustworthiness/Our 15 Ideas? Do you see that heading? 16 A Um-hmm. 17 Q Yes? 18 A Yes. 19 Q All right. So is this something that 20 brokers at Long Leaf used during your tenure? 21 A They had this document. I don't know 22 that I heard them use -- a couple of these things 23 they would use, but I don't think most of it. 24 Q Was this a document you gave to brokers</p> |

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1 to answer customer objections?
 2 A It's something our sales manager gave
 3 them, yes.
 4 Q Who's the sales manager?
 5 A That was Scott Gecas.
 6 Q All right. And did he do that at your
 7 instruction?
 8 A I said I was okay with them having this
 9 information for training purposes.
 10 Q You mean the information in Exhibit 5,
 11 correct?
 12 A Correct.
 13 Q And had you reviewed it before you had
 14 okayed it?
 15 A I had read through it and understood
 16 how it was being used.
 17 Q All right. So let's take a look, if we
 18 could, please, at this passage underneath Closing
 19 off of Accountability/Trustworthiness/Our Ideas,
 20 that heading. So a couple paragraphs down it says,
 21 "We are very confident because we are good at what
 22 we do, and you're never really going to know that
 23 until you actually try it. But we are so confident
 24 in what we do and confident that we can make those

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1 your results that we work on a one-month contract.
 2 We only make money when we execute positions, and
 3 you only execute positions if you're winning and
 4 making money." So was that something you heard
 5 brokers say?
 6 A Yes.
 7 Q All right. Was that okay with you or
 8 did you discipline them for it?
 9 A The way I understand it is that we
 10 are not on a long-term contract. We're on a
 11 month-to-month contract and we don't make --
 12 we only get paid commissions when they execute
 13 positions, and that requires them to make the
 14 decision. So I don't make money if they don't
 15 trade.
 16 Q Right. But, you know, I asked you
 17 if you disciplined any -- or chided any brokers
 18 for making these representations that I just rattled
 19 off in Exhibit 5, you know. Did you? This was okay
 20 for them to say?
 21 A Yeah, this was specifically talking to an
 22 individual about how we were paid.
 23 Q So it says here we are very confident
 24 because we are good at what we do. What basis

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1 would a Long Leaf broker have to say that we are
 2 good at what we do when customers so consistently
 3 lose money trading with Long Leaf? Why would they
 4 say that? Why would you let them say that?
 5 A I mean, point taken on that piece. I'm
 6 looking at the rest of what that --
 7 Q I don't care about the rest of it. I care
 8 about that bit.
 9 MS. WING: I object to the point
 10 that just one or two sentences may be taken
 11 out of context, but go ahead and answer.
 12 A Yeah, I --
 13 MR. BURDEN: What was the question
 14 again, please. Would you read it back for
 15 Mr. Donelson?
 16 THE WITNESS: Yeah, I'm not even sure
 17 what the question was anymore.
 18 (Whereupon the portion of the record
 19 was read as requested.)
 20 A We do have knowledge of trading
 21 and we do understand that. That's what we're good
 22 at. Now, transferring that into profitability for
 23 a client, we have other things that we have to --
 24 pure structure of the trade was one of the issues

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1 in terms of commission rates. That's why I dropped
 2 them significantly.
 3 BY MR. BURDEN:
 4 Q Yeah, so let's talk about the structure.
 5 If you will turn the page, please, I want to direct
 6 your attention to this topic heading Structure More
 7 Important than Performance. And I want to direct
 8 your attention, if I could, please, to that second
 9 paragraph and it says, "Where our program is
 10 unmatched and has been so successful is the actual
 11 structure of it. It's four trades a month that
 12 happen in the same time frame toward the end of the
 13 month, and we are following an execution strategy
 14 that both me and you designed in the beginning
 15 before even getting started."
 16 Was this something that you approved
 17 for brokers to say?
 18 A No, I think we took that out.
 19 Q I thought your testimony was that
 20 you had approved Exhibit 5 and you had allowed
 21 Mr. Gecas to distribute this to brokers.
 22 A Maybe I'm wrong. This is -- I know --
 23 I don't remember anybody ever saying this. So these
 24 are not -- it isn't one continuous conversation.

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1 These are possible answers to possible questions.
 2 Q Got it.
 3 A So it's not like you would read the whole
 4 entire thing.
 5 Q I kind of figured that. So this
 6 representation about our program being unmatched
 7 and so successful, was this part of the rebuttal
 8 document that you approved for Mr. Gecas to
 9 distribute?
 10 A Early on, yes.
 11 Q All right. So, again, this representation
 12 the program is unmatched and has been so successful,
 13 what basis would a broker have at Long Leaf for
 14 representing to a client that Long Leaf's program
 15 was so successful?
 16 A That's the piece that I had them
 17 take it out over time, was we didn't want to make
 18 that representation. But the other one is really
 19 the structure of the trade.
 20 Q So, I mean, obviously this is the
 21 important representation, as far as I'm concerned,
 22 about being successful. So your testimony is that
 23 you had somebody take this out of the rebuttal
 24 document, is that right?

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1 A I think so, yes.
 2 Q And who did you have do that?
 3 A That would have been Andrew working
 4 on this piece.
 5 Q Andrew Nelson?
 6 A Yeah. We got away from using almost
 7 any of these rebuttals because the sales style I was
 8 also trying to change at the same time.
 9 Q All right. So when did you advise
 10 Mr. Nelson to remove this representation about the
 11 success of Long Leaf's program from the rebuttal --
 12 A I think soon after getting this.
 13 This is a scanning -- this is a document I just
 14 scanned and sent to him because all we had was a
 15 PDF -- or not even a PDF version. We had a printed
 16 copy of it.
 17 Q So your testimony is that, you
 18 know, shortly after July 25, 2018, which is
 19 when this document was sent, that was when you
 20 told Mr. Nelson, hey, take this bit about, you know,
 21 success out of the rebuttal document?
 22 A Actually, I think we pulled back
 23 on even distributing this document in general.
 24 It could be used incorrectly too easily.

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1 Q Let's do it one bit at a time. When did
 2 you tell Mr. Nelson to remove this representation
 3 about the trading program being --
 4 A It would have been in August.
 5 Q Of 2018?
 6 A Of 2018.
 7 Q And did he do that?
 8 A We've never reissued this whole
 9 rebuttal sheet to any of our brokers.
 10 Q So the brokers were --
 11 A And we were down to only four or five
 12 brokers or five or six brokers.
 13 Q So then were the brokers working with
 14 an older version of the rebuttals?
 15 A They might have been, yes.
 16 Q Here we go. So let's go back, if we
 17 could, please, to page 4 of Exhibit 5, which is
 18 actually page 3 of this rebuttals document, and
 19 I want to direct your attention to the heading
 20 that says Past Performance Request. What's this
 21 piece, please.
 22 A This is a -- like I said, it's not
 23 to be read across the board. It's really each
 24 and every rebuttal. We worked on a very specific

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1 kind of how do we talk about past performance. And
 2 that's where we were talking about the change in the
 3 trading style that we did, that we've seen some good
 4 results, but we tried to avoid talking about the
 5 prior performance of the previous trading because
 6 it's not the same.
 7 Q All right. So it sounds like, without
 8 me having to read it all, this past performance
 9 request piece of the rebuttals document is if people
 10 ask about past performance, you sort of don't tell
 11 them, is that right?
 12 A You don't -- that's what those rebuttals
 13 are, yes.
 14 Q All right. And was this an approach that
 15 you sanctioned?
 16 A No. That's where we were talking
 17 about our specific -- separating what was the
 18 prior trading strategy to what our current trading
 19 strategy is.
 20 Q So what did you tell brokers to say to
 21 customers if they asked about past performance?
 22 A First, that we had made a change in our
 23 trading style.
 24 Q Got it.

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1 A While -- and we didn't change a lot
 2 of the Power Points or anything like that, but to
 3 say we're using a lot of the same concepts, however,
 4 in a different way. Time decay, but we're long
 5 not short. Not credit spreads, debit spreads.
 6 And that we have seen some success going forward.
 7 We are looking for more consistency and that we
 8 have seen -- this was probably three to four months
 9 in by the time we were looking at this, and we
 10 had seen good month, bad month but then we've seen
 11 kind of it leveling off to decent profitability.
 12 Not what I was looking for, but at least it was
 13 profitable or at least breakeven.
 14 Q Did you tell brokers that they needed
 15 to disclose to customers what the past performance
 16 was?
 17 A Well, I told them specifically to
 18 talk about our current trading strategies, not the
 19 previous trading strategies, because we were not
 20 going back to those trading strategies.
 21 Q All right. So you specifically
 22 told brokers that if customers asked about past
 23 performance, not to talk about it and instead to
 24 talk about --

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1 MR. BURDEN: You're not going to object.
 2 MS. WING: I am going to object.
 3 BY MR. BURDEN:
 4 Q -- future performance, correct?
 5 MS. WING: Because I think he already
 6 testified to the same question.
 7 MR. BURDEN: All right. Ms. Wing, I'm
 8 going to ask the questions I want to ask in
 9 the order I want to ask them. You can object
 10 on the basis of Fifth Amendment or privilege.
 11 It's not a deposition. Evidentiary objections
 12 are not preserved and that's not an evidentiary
 13 objection anyway. And especially to object
 14 in the middle of a question on a topic this
 15 important is in extraordinary bad faith.
 16 MS. WING: Look --
 17 MR. BURDEN: We're going to get back.
 18 To my question, and we're done with your
 19 objection.
 20 MS. WING: Sir, treat me with civility.
 21 MR. BURDEN: If you want civility, you can
 22 object properly.
 23 MS. WING: And we can dispute the way --
 24 but, look, you've asked several questions

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1 throughout this deposition, identical questions
 2 and, I mean, the identical questions that you've
 3 asked several times.
 4 MR. BURDEN: I do not believe that is
 5 a question that is identical to any previous
 6 question. If you think you could find one in
 7 the record, you'll need to do that.
 8 MS. WING: When we get the record,
 9 I'd be happy to point it out.
 10 MR. BURDEN: Great.
 11 MS. WING: But it is late in the day.
 12 It is late in the day.
 13 MR. BURDEN: And you've bought yourself
 14 a ticket back by failing to turn over those
 15 bullet points.
 16 MS. WING: You know, this is ridiculous
 17 and this is uncivil. And if you do it again,
 18 you and I are going to go --
 19 MR. BURDEN: What are we going to do?
 20 MS. WING: We'll go over and talk to
 21 the ARDC about whether or not this is civil.
 22 MR. BURDEN: Are you making a threat
 23 to advise the ARDC?
 24 MS. WING: No, you are implying that

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1 it was intentional. It was not intentional.
 2 We have been -- we've turned over thousands
 3 of pages of documents that we have -- if there
 4 is a missing document that was inadvertently
 5 not turned over, we said we would correct that.
 6 MR. BURDEN: All right. Counsel,
 7 I don't know if it was withheld intentionally
 8 or not and I'm not implying that it was, but
 9 you will be coming back to talk about it.
 10 MS. WING: Fine, I'm happy to. If we're
 11 going to be coming back, maybe it's a good time
 12 to stop.
 13 MS. STREIT: Answer the question.
 14 MR. BURDEN: No, we're going to keep going.
 15 MS. WING: No, wait a second. How
 16 much longer are you going to continue to go?
 17 It is after 5. I want that on the record.
 18 And we have been here since 9, and we have
 19 taken breaks. I'm not saying we haven't, but
 20 how much longer do you want to go today?
 21 MR. BURDEN: You know, I have so much
 22 more to do that I think that I could go as
 23 long as you would let me go.
 24 MS. WING: Well, it is very long

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1 and there are some health reasons why somebody
2 shouldn't be going this long, okay?
3 MR. BURDEN: Without going into
4 any particular detail, are you referring to
5 personal, specific reasons for you or your
6 client or just in general?
7 MS. WING: Personal reasons.
8 MR. BURDEN: All right. In that case
9 what I would like to do is finish this line of
10 inquiry. And if you would like, we can break,
11 with the understanding that you will return.
12 MS. WING: We never said we wouldn't.
13 BY MR. BURDEN:
14 Q All right. So let's return to
15 this past performance request that we have been
16 laboring over in Exhibit 5. So your testimony is
17 that clients were not advised by brokers that past
18 performance was losses across the board, is that
19 correct?
20 A As it relates to the prior strategies.
21 We weren't using those strategies. We started
22 fresh in February of 2018. We talked about what
23 performance we had on those trades, but we would not
24 talk about the prior strategy. It wasn't pertinent.

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1 Q All right. So as the prior strategy
2 matured, I think it's fair to say that customers
3 I think you testified lost money overall, is that
4 correct?
5 A Which -- define which strategy you're
6 talking about.
7 Q The strategy that you utilized between
8 January-February of 2018 and January of '19. I
9 think you had described them as debit spreads?
10 A Yes, they lost money on those trades.
11 Q All right. Did you instruct brokers
12 to tell customers that Long Leaf Trading had lost
13 money for clients on those strategies?
14 A We were talking -- I instructed
15 them to talk plainly and simply about we haven't
16 found the consistency we want but that we have seen
17 profitability on trades. However, in some cases,
18 you know, markets turn against you. There's not
19 much you can do about it and that really the biggest
20 losses were one month in 2018 I think. It would
21 have been our May trades, but it would be probably
22 hitting the June statement.
23 Q All right. So to boil it down, you
24 told brokers when you had the history from the

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1 debit trades to tell clients there were profitable
2 months and not profitable months, is that fair?
3 A Right, that we're looking to be
4 consistent and that we had made profits in I want
5 to say six out of eight months. It was just the one
6 month that blew up. Then we had another probably
7 in November-December when the whole market went
8 haywire. It just blew up our trades, and that's
9 why we went away from that strategy. It was too --
10 it was too volatile. It didn't do what I wanted
11 it to do.
12 Q So in January of 2019 did brokers advise
13 clients, hey, we have this debit spread strategy and
14 customers lost money using it net net. They all
15 lost money. Did brokers say that to clients?
16 A To our clients?
17 Q Yes.
18 A Yes. I mean, we walked each one of
19 the clients that we had through the new strategy.
20 Q So your testimony is that brokers
21 told customers that Long Leaf's trading strategy
22 with the debit spreads was a losing strategy?
23 A The clients that were there already
24 knew that.

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1 Q I guess that's true. What about
2 prospective clients on sales calls?
3 A Prospective clients, we specifically
4 walked them through the strategy we were rolling
5 out, told them where we are in that process, you
6 know, that we don't have much experience with it.
7 We changed the presentation. I think we sent all
8 that solicitation material in to the NFA in -- I
9 think the first time we sent it was in February,
10 and I think we finally got it approved in March
11 sometime.
12 Q So my question is when your openers
13 or your closers are talking to prospective clients
14 in January of 2019 or in December of 2018, are they
15 telling customers, hey, we had this credit spread
16 strategy and all the customers have lost money?
17 Did they disclose that to clients, prospective
18 clients?
19 MS. STREIT: I think you mean debit.
20 MR. BURDEN: Yeah, debit. Let me do
21 that whole thing again.
22 Q So when your brokers were talking
23 to prospective customers in December of 2018
24 or January of 2019, were they disclosing to those

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1 customers that substantially all the Long Leaf
 2 trades -- or substantially all Long Leaf customers
 3 had lost money with the debit spreads?
 4 A I don't know how many new customers we
 5 brought in. We were spending more time working
 6 with the existing customers, getting them rolled
 7 over to this new strategy and making them understand
 8 it. Any new clients came in, I usually talked to
 9 them before they actually joined the firm.
 10 Q So your testimony is that --
 11 A We were in the process of trying
 12 to get new marketing materials and everything else
 13 because everything we had before, that really didn't
 14 apply in the way I wanted it to.
 15 Q So did you advise clients, new
 16 clients that customers of Long Leaf Trading
 17 had net net substantially all lost money? Is that
 18 a thing you told any client?
 19 A I don't know that I told any client
 20 coming in, but I don't remember a lot of clients
 21 coming in either.
 22 Q But surely there were brokers that
 23 were calling new leads in early 2019?
 24 A Actually, we were going through and

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1 working out a lot of things other than calling
 2 new leads. It was keeping the customers we already
 3 had.
 4 Q Well, how many leads were being called
 5 on a daily basis by Long Leaf customers?
 6 A I would have to look at the records,
 7 but the number of people that were being contacted
 8 probably were mostly people we had talked to before
 9 or had gone through a process versus brand new
 10 fresh leads that we went through.
 11 Q All right. Mr. Donelson, at this
 12 time we are adjourning our testimony to a date to
 13 be determined in the future. It could be tomorrow
 14 if you guys want, but it doesn't have to be.
 15 MS. WING: It cannot be tomorrow.
 16 BY MR. BURDEN:
 17 Q All right. Mr. Donelson, although
 18 testimony is adjourned, you remain under subpoena.
 19 Mr. Donelson, is there anything you wish to clarify
 20 for the record or to add to the statements you've
 21 made today?
 22 MS. WING: Well, since we're continuing,
 23 we'll reserve that until the next time if we
 24 think of anything to clarify.

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1 BY MR. BURDEN:
 2 Q Can you think of anything to clarify,
 3 Mr. Donelson?
 4 A I can't remember everything I said,
 5 so it's hard to clarify but --
 6 Q Anything spring to mind?
 7 A There was one thing in my head. Let me
 8 think for one second.
 9 Q Sure. Do you want to adjourn with your
 10 counsel and return to advise us of it?
 11 A Yeah, because I knew what I was
 12 going to say and then it just bounced off my head.
 13 MR. BURDEN: All right. Well,
 14 we'll go off the record and we'll come
 15 right back on and then we'll go off again.
 16 THE WITNESS: Okay, thanks.
 17 (Whereupon a recess was taken from
 18 5:19 p.m., to 5:24 p.m., after which
 19 the following proceedings were had:)
 20 MR. BURDEN: Back on the record, please,
 21 Mary.
 22 Q All right. Mr. Donelson, you wanted
 23 to clarify or add something?
 24 A There was something to clarify on

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1 Exhibit 4 and 5. Those should have been in the
 2 solicitation materials that I provided in the first
 3 4g request. They would be all of the solicitation
 4 materials. If they're not there, let me know, but
 5 that's where they're supposed to be, is in the
 6 documents.
 7 MS. WING: And the highlighted --
 8 A The training materials were in the
 9 solicitation materials. That's where they should
 10 have been. If they aren't, let me know, but that's
 11 where I thought they were.
 12 MS. WING: And we will provide you with
 13 the highlighted training material, but my client
 14 is under the assumption it was in the first
 15 data drop to you.
 16 THE WITNESS: The first -- yeah, the
 17 first one, not the second one.
 18 MR. BURDEN: I know exactly what you're
 19 talking about. I just don't know off the top
 20 of my head if that was in there.
 21 THE WITNESS: If it wasn't --
 22 MS. WING: But if it wasn't, it was
 23 inadvertent.
 24 MR. BURDEN: Got it. Okay.

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| <p style="text-align: right;">Page 305</p> <p>1 THE WITNESS: Because that's where 2 I store all my solicitation materials, in one 3 place. 4 MS. WING: But I do want the record to 5 reflect there was some technical difficulty in 6 doing that data dump, and we worked extensively 7 with your tech team in hopefully resolving that. 8 MR. BURDEN: Okay. 9 A That was -- it took me time to remember 10 what it was, but that was it. 11 BY MR. BURDEN: 12 Q All right. So your testimony 13 is that Exhibits 4 and 5 should have been in 14 the solicitation materials and maybe weren't? 15 A Yeah. 16 Q And is it Exhibit 4 and 5 in the form 17 that we have reviewed them or is it some other draft 18 or version of Exhibit 4 or 5? 19 A I would -- I think they would be in PDF 20 form versus a Word document form. 21 Q Setting that aside, it's the content 22 I care about. 23 A The content, I'm assuming it would be the 24 version before you see those edits.</p> | <p style="text-align: right;">Page 307</p> <p>1 A I think so, yeah. 2 Q All right. And how would those edits 3 be reflected? Like are they just in there? Are 4 we looking at the edited version? 5 A I don't know. It doesn't look like 6 I redlined it. 7 Q So presumably any edits you made to 8 the demo junior broker document in Exhibit 4 are 9 reflected in the text of Exhibit 4? 10 A Like I said, soon after this was 11 sent Andrew and I had a conversation and said, 12 you know, let's -- trying to put lipstick on a 13 pig didn't make sense. Let's rebuild the entire 14 presentation and everything else. So this was never 15 released to anybody, this version of it. 16 Q And this version has your edits in 17 Exhibit 4? 18 A Some of my edits, yeah -- or my edits. 19 I'm sorry, not some. My edits. 20 Q Got it. 21 A But like I said, after thinking through 22 it, a couple days later we just said start from 23 scratch. Let's do it all over again. We've gone 24 away from having any scripts at all. We only use</p> |
| <p style="text-align: right;">Page 306</p> <p>1 Q But you don't know for sure? 2 A I'm pretty sure it is because that 3 document is JD edits, meaning there was a document 4 before that. 5 Q Got it. 6 A That's the way I would classify things. 7 Q So Exhibit 4 -- 8 A And I think that -- just from what 9 I'm seeing is I think the dark points on there are 10 what's actually changed, but I'm not sure. 11 Q Got it. So your testimony that 12 Exhibit 4 -- 13 A As I said, on Exhibit 4 we started 14 down the path of trying to edit through it and 15 everything and said we hate the presentation. 16 It doesn't make sense for what we're trying to do 17 now versus spending a whole bunch of time trying 18 to rewrite this, let's go down a different path and 19 create it from scratch. 20 Q All right. So Exhibit 4, there's this 21 email from you to Mr. Nelson and the attachment 22 is Demo Junior Broker Revised JD.docx. So your 23 testimony is that revised JD indicates that you 24 made edits to this document, correct?</p> | <p style="text-align: right;">Page 308</p> <p>1 bullet points. 2 Q All right. Anything else you want to 3 add or clarify to your testimony? 4 A Not at this time. Not that I can remember. 5 MR. BURDEN: Okay. Well, I'll tell you 6 what, you know. We could do more, and I'm sure 7 we want to see this document. But rather than 8 say it's, you know, adjourned and you're still 9 under subpoena, I think it probably makes sense 10 to close the record and say that we have no 11 further questions at this time. We reserve 12 the right, as always, to call you again in 13 this investigation and we will then provide 14 a subpoena to your counsel should that become 15 necessary. We'll see what happens with these 16 bullet points and these documents if we have 17 them or need to talk more. 18 Q In light of that, in light of the fact 19 that you will not be returning, at least right now, 20 do you have any additional questions -- or, sorry, 21 any additional clarifications to your testimony? 22 A Not that I know of at this time. I mean, 23 I would like to see a transcript of it so that 24 I can look and see, A, did I make any sense, was</p> |

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| <p style="text-align: right;">Page 309</p> <p>1 I -- did it capture what I was trying to say, that I 2 can provide some clarification of what I was trying 3 to say. 4 Q I mean, is there anything that you want 5 to correct now? 6 MS. WING: Well, I think there is a 7 clarification that Mr. Donelson was not the 8 sales manager while he was there, and I think 9 that got lost in all this. 10 BY MR. BURDEN: 11 Q Is that correct, Mr. Donelson? 12 A Correct. I was -- when I first got 13 there Scott Gecas was -- I appointed him to sales 14 manager. Brian Adams also served as -- he wasn't 15 really the sales manager, but he oversaw a lot of 16 the issues with compliance and things like that. 17 MS. WING: He was the compliance manager. 18 THE WITNESS: Right. 19 BY MR. BURDEN: 20 Q Any other additions or corrections? 21 MS. WING: I'm trying to -- there might 22 have been, now that you said we're not coming 23 back. 24 MR. BURDEN: Yeah.</p> | <p style="text-align: right;">Page 311</p> <p>1 relative to our new system. 2 BY MR. BURDEN: 3 Q Any other additions or corrections? 4 MS. WING: No, not at this time. And 5 if you order it, we'll reserve signature. 6 MS. STREIT: They do not get to order the 7 transcript. This is investigative testimony. 8 If you want, I believe -- 9 MS. WING: Right. We can request one. 10 MS. STREIT: You can request it 11 by writing a letter I believe to our deputy 12 director requesting to look at it, but you 13 cannot actually take a copy of it at this time. 14 MS. WING: But don't we look at it 15 at the court reporter's -- 16 MR. BURDEN: No. 17 MS. STREIT: No. I think you 18 look at our copy of it here, but you have 19 to request that formally. I think there's 20 actually a provision in the rules about that. 21 MS. WING: Right. 22 MR. BURDEN: Yeah, that is right. 23 I knew there was something, and that's what 24 it is.</p> |
| <p style="text-align: right;">Page 310</p> <p>1 MS. WING: And I think one thing I would 2 like the record to reflect, that Exhibit 4 and 3 5, they were existing documents under Mr. Evans. 4 MR. BURDEN: I mean, here's the thing. 5 Are you testifying right now? 6 MS. WING: No, but I think there needs 7 to be a clarification because I think some 8 of your questions came out implying that -- 9 it may have the record misconstrued that 10 Mr. Donelson created these documents, so 11 I'd like him to clarify. 12 Were these documents in existence 13 when you acquired the company? 14 A All of the documents regarding sales 15 training and presentations and everything else were 16 the original documents that I received at the time 17 of the acquisition, and they had been in use before 18 that. 19 BY MR. BURDEN: 20 Q Any other clarifications or additions? 21 MS. WING: And they're no longer in use? 22 A Correct, they are no longer in use. 23 We've replaced them with solicitation documents 24 that you've received relative to our new strategies</p> | <p style="text-align: right;">Page 312</p> <p>1 MS. WING: That's fine. 2 MR. BURDEN: All right. Anything else? 3 MS. WING: No. 4 MR. BURDEN: Mr. Donelson? 5 THE WITNESS: Nothing I can think of. 6 MR. BURDEN: All right. Well, in 7 that case we have no further questions at this 8 time. We'll call you if necessary. We're off 9 the record. 10 WHICH WERE ALL THE PROCEEDINGS 11 HAD OR OFFERED AT SAID HEARING 12 OF THE ABOVE-ENTITLED CAUSE. 13 14 15 16 17 18 19 20 21 22 23 24</p> |

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)
4 I, MARY MASLOWSKI, CSR, do hereby
5 certify that I reported in shorthand the proceedings
6 had at the examination under oath aforesaid, and
7 that the foregoing is a true, complete and accurate
8 transcript of the proceedings at said examination
9 under oath as appears from the stenographic notes so
10 taken and transcribed on the 11th day of September,
11 2019.

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15 Certified Shorthand Reporter
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